

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

AIRTECH INTERNATIONAL INC.,

Plaintiff,

vs.

BYUNG CHAN YIM, et al.,

Defendants.

CIVIL ACTION NUMBER:

2:22-cv-668-MEF

Preliminary Injunction  
Hearing

VOLUME II, Pages 149 - 290

Frank R. Lautenberg Post Office and Courthouse  
Two Federal Square  
Newark, New Jersey 07102  
January 30, 2024

B E F O R E:

THE HONORABLE MICHAEL E. FARBIARZ,  
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

KIM & BAE P.C. BY:  
CHRISTINE M. BAE, ESQ.  
CARLTON R. ASHER, ESQ.  
2160 North Central Road  
Suite 303  
Fort Lee, New Jersey 07024

appeared on behalf of the Plaintiff;

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Official Court Reporter  
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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-aided transcription.

**A P P E A R A N C E S:** (Cont'd.)

BRACH EICHLER LLC, BY:  
KEITH J. ROBERTS, ESQ.  
THOMAS KAMVOSOULIS, ESQ.  
101 Eisenhower Parkway  
Roseland, New Jersey 07068-1067  
and  
BRACH EICHLER LLC, BY:  
JOHN SIMEONE, ESQ.  
106 Summit Avenue  
Waldwick, New Jersey 07463

appeared on behalf of the Defendants; and

**A L S O P R E S E N T:**

Lisa Kwon-Lee, Interpreter.

**I N D E X**

**WITNESSES:**

DX

CX

RDX

RCX

FDX

FCX

CHAN YONG UM

155

JIN OUK LEE

163

201

BOO HYUN KANG

207

SEO YOON

216

TOMMY KIM

223

241

245

246

JIN WOO CHUN

249

**E X H I B I T S**

MKD/ID

RECEIVED

Plaintiff's Exhibit No:

27

159

2 (Declaration received.  
Attachments received in part,  
per the record.)

173

37 (Declaration received.  
Attachments received in part,  
per the record.)

185

149 (Declaration received.  
Attachments received in part,  
per the record.)

186

156 (Declaration received.  
Attachments received in part,  
per the record.)

190

169 (Declaration received.  
Attachments received in part,  
per the record.)

192

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E X H I B I T S

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	Plaintiff's Exhibit No.		
	28		222
	132		230
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	30 (Received in part, per the record.)		269
	163 (Declaration received. Paragraphs received in part, per the record.)		273

1 (PROCEEDINGS held in open court before the  
2 HONORABLE MICHAEL E. FARBIARZ, United States  
3 District Court Judge, on January 30, 2024.)

4 THE COURT: Good morning, everybody. I'm sorry we  
5 had such technical troubles getting in. It was a little more  
6 challenging than we imagined it would be. My apologies, in  
7 particular, to the witness who I know to be in a different  
8 time zone where it's late.

9 I wanted to say something to the Interpreter.

10 THE INTERPRETER: Sure.

11 THE COURT: You need to -- when you're doing  
12 interpreting, you need to be speaking directly to the person  
13 you are interpreting for so we don't all hear you speaking.

14 THE INTERPRETER: So do you want me to mute my  
15 microphone?

16 THE COURT: Yes. Mute it so that only the person  
17 you're interpreting for can hear you.

18 Can you do that?

19 THE INTERPRETER: I can do that. Every time he gives  
20 an answer, then I will have to go back and forth, mute and  
21 un-mute. So when there is a Q and A, then I may stay on so  
22 that I don't forget to mute or un-mute. But when there is a  
23 long statement by the counsel or Your Honor Judge, then I will  
24 mute myself and simultaneously interpret for the time's sake.

25 THE COURT: That sounds great. We're going to have

1 to swear you in as well, I think.

2 Before we get there, I want to say one thing to the  
3 lawyers.

4 First of all, my apologies again that we're starting  
5 late. The record can reflect that it's now 10:40. We  
6 struggled with some technical issues.

7 What I want to say to everyone is just to pick up a  
8 little bit where we ended yesterday. I am going to be very,  
9 very, very receptive to getting written evidentiary  
10 submissions. If people want to put in declarations or  
11 affidavits, even at the end of today, the record will remain  
12 open for those.

13 If people want to argue that a declaration needs to be  
14 cross-examined or its value should be radically discounted for  
15 lack of examination, I will be open to that as well. But  
16 that's how we're going to be proceeding.

17 So our first witness for today needs to be sworn in,  
18 our Interpreter needs to be sworn in, and then we can proceed.

19 I just want the record to reflect, given that we are in  
20 the Zoom setting, I see three attorneys on the screen who  
21 together represent the two defendants, and I see two attorneys  
22 on the screen who together represent the plaintiff. They are  
23 the same lawyers who appeared yesterday, January 29th, at day  
24 one of this two-day, I stress "two-day," proceeding.

25 We have as well on the screen an interpreter who will

1 be sworn, a witness who will be sworn, as well, of course, as  
2 the Court Reporter and the Courtroom Deputy.

3 I'll ask the Courtroom Deputy to please at this time to  
4 swear in the witness and to swear in the Interpreter, as well.

5 (Whereupon, the Interpreter was duly sworn.)

6 (Whereupon, the witness was thereupon duly sworn.)

7 THE COURT: Great. Thank you so much. Let's get  
8 started.

9 CHAN YONG UM,

10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Asher:

13 BY MR. ASHER:

14 Q. Mr. Um, please give your full name and your residence  
15 address?

16 A. My name is Chan Yong Um.

17 Q. Please provide your residence address.

18 THE INTERPRETER: He is in the process. Do you want  
19 to hear him speak as he speak? Because when he's on mute,  
20 it's probably hard for you to know what's going on.

21 MS. BAE: No. It's okay.

22 THE INTERPRETER: Okay.

23 A. (Continuing.) I live -- my address is Tatanji, Koonan  
24 Lake City Apartment, Tongconda-ro 67 Hwaseong-si Gyeonggi-do.  
25 (Phonetic.)

1 BY MR. ASHER:

2 Q. Please identify the name of your employer at present?

3 A. I work for MM-SYS.

4 Q. Is MM-SYS an affiliate of Airtech International Inc., a  
5 company based in New Jersey?

6 THE INTERPRETER: May the interpreter request a  
7 repetition of the question?

8 THE COURT: Before you do that, hang on for just one  
9 second. We're all just getting used to how the Zoom thing is  
10 going to work here this morning and this afternoon.

11 Here is what I would propose: We should be able to  
12 hear the witness speaking. Okay? Why don't you convey that.

13 Interpreter, please convey that directly to the  
14 witness. We want to hear his voice speaking, even though we  
15 don't know what it means. That might be important to lawyers  
16 who want to mount a cross-examination. It might be important  
17 to me.

18 Can you just let him know that, please.

19 THE INTERPRETER: Sure. I understand.

20 (Brief pause.)

21 THE INTERPRETER: I do so.

22 THE COURT: Okay, Mr. Asher. Let's go.

23 BY MR. ASHER:

24 Q. How long a period of time have you worked with MM-SYS?

25 A. I've been working at MM-SYS since 2014.

1 Q. During that period of time, have you ever worked with Roy  
2 Yim, also known as Byung Chan Yim?

3 A. I mainly worked with him as a cross-partner.

4 Q. Did Mr. Yim work from time to time on behalf of Airtech  
5 in Korea?

6 A. Could you please clarify whether you're asking me if  
7 Mr. Yim had worked in Korea -- located in Korea or was he on  
8 business trip working? I'm not clear on that.

9 Q. Specifically I'm asking about business trips on his part  
10 in Korea.

11 A. Yes.

12 Q. Did you accompany him to meetings with Airtech customers  
13 in Korea?

14 A. Yes.

15 Q. How frequently did you accompany him to customer meetings  
16 in Korea?

17 A. I accompanied him in most of his business trip, Korea.

18 Q. Give us an approximation in terms of a number of  
19 situations where the two of you met with customers in Korea?

20 THE INTERPRETER: Excuse me. Should we just hang up  
21 the international call and speak on the screen? Because we  
22 are just doing it.

23 MS. BAE: Yes.

24 (Brief pause.)

25 THE INTERPRETER: He's hanging up, and we'll just do

1 it on the speaker.

2 A. Are you asking me per visit or in total?

3 BY MR. ASHER:

4 Q. In total. Give me an approximate number of the total  
5 visits the two of you visited with Airtech customers in Korea?

6 A. It's a lot. And he would come to Korea twice a year, and  
7 each time for about a week we would continuously meet with  
8 customers.

9 Q. What is your current position with MM-SYS?

10 A. I am the CEO of MM-SYS, and I am also a branch manager  
11 for Airtech, Korea bureau.

12 Q. How long a period of time have you served in those  
13 capacities?

14 A. I have worked in this capacity since 2014.

15 Q. I'd like to show you a document that's been pre-marked as  
16 Exhibit PX-27. We'll put that on the screen before you.

17 THE COURT: Mr. Asher, before you put up documents,  
18 why don't you just indicate that you're going to be offering  
19 it and let's get a position from your adversary quickly.

20 Let's do that for all documents that come up on the  
21 screen. So far every document you put up has been to offer.  
22 I think we all know what's coming. Let's try and save a step.

23 MR. ASHER: PX-27, Your Honor, is -- and I'm offering  
24 it into evidence as a declaration of Mr. Um, which was  
25 submitted in this case in 2022 in support of plaintiff's

1 motion for injunctive relief.

2 THE COURT: Mr. Roberts, any objection?

3 MR. ROBERTS: Yes, because it's -- we have the  
4 witness's testimony, so I don't -- to me, it's one or the  
5 other. I have no issue with the declaration being offered in  
6 lieu of testimony, but we have his testimony. So I don't see  
7 the purpose or why do we --

8 THE COURT: It's overruled. We do have the witness,  
9 but you can cross him if you would like on any discrepancies  
10 or any other issues. Of course the Rules of Evidence don't  
11 even apply at this kind of proceeding.

12 While there are areas in which I care greatly about the  
13 Rules of Evidence, because there's facial unreliability such  
14 as the multiple levels of hearsay that we began discussing  
15 yesterday, you have a witness in front of you, he has a sworn  
16 statement made under penalty of perjury, I'm going to  
17 allow it.

18 Let's move on, Mr. Asher.

19 (Plaintiff's Exhibit No. 27 was received in  
20 evidence.)

21 BY MR. ASHER:

22 Q. On the third page of Plaintiff's 27, which is in front  
23 of you right now, is that your signature?

24 MR. ASHER: Mr. Asher, the document is in evidence.  
25 Let's move on. Let's get to the substance.

1 A. Yes.

2 MR. ASHER: I have no further questions, Your Honor.

3 THE COURT: Mr. Roberts.

4 MR. ROBERTS: No cross. Thank you, Your Honor.

5 THE COURT: Next witness.

6 (Witness excused.)

7 MS. BAE: We call Mr. Lee.

8 MR. ROBERTS: Your Honor, may I make a brief proffer?

9 If there is not going to be testimony that supplements the  
10 declaration, I won't object. If that's all right.

11 THE COURT: Helpful point. I take Mr. Roberts' point  
12 to be that had he known in advance that the declaration is  
13 going to substitute for the direct, he would not have objected  
14 to the declaration.

15 Do I have that right, Mr. Roberts?

16 MR. ASHER: He knew that completely.

17 THE COURT: Mr. Asher, let him answer the question I  
18 put to him.

19 Mr. Roberts, is that what you were saying?

20 MR. ROBERTS: Yes. In other words, to me, it's one  
21 or the other. In this particular area I didn't hear any  
22 supplemental testimony, so I would not have objected.

23 THE COURT: Got it.

24 MR. ROBERTS: If there's gonna be supplemental  
25 testimony, I'll take it -- I have to know what's gonna happen

1 before I --

2 THE COURT: I understand. Mr. Roberts, what I now  
3 understand is that his prior objection to the declaration is  
4 withdrawn.

5 Mr. Asher, even if you believe that Mr. Roberts should  
6 know, if you're offering a declaration in lieu of direct  
7 testimony, please clarify that as you offer the declaration.  
8 Let's get to the next witness.

9 MR. ASHER: Your Honor, let me make clear that I  
10 merely am making two points. I merely gave a brief  
11 introduction through his live testimony. Then I offered into  
12 evidence Mr. Um's declaration.

13 With respect to certain of the other witnesses who have  
14 certain supplemental testimony that are not related in some  
15 instances from what is set forth in their declarations, same  
16 case but different --

17 THE COURT: Mr. Asher, I completely hear you. Here  
18 is what we're gonna do: When you offer a declaration, simply  
19 say whether the offering of the declaration will complete the  
20 direct testimony or whether it will not complete direct  
21 testimony. That will solve our communication issue and we'll  
22 get any objections that Mr. Roberts has.

23 Does that make sense?

24 MS. BAE: Yes, Your Honor.

25 THE COURT: Terrific. Let's get to the next witness.

1 MS. BAE: The plaintiff calls Mr. Lee.

2 (Brief pause.)

3 THE INTERPRETER: Should the witness disconnect now?

4 THE COURT: The witness in South Korea should  
5 disconnect now.

6 THE WITNESS: Thank you, everyone.

7 (Brief pause.)

8 MR. ASHER: Your Honor, I am re-calling Mr. Lee.

9 THE COURT: Great. Mr. Lee, thank you for your  
10 indulgence in breaking yesterday.

11 (The witness was previously duly sworn.)

12 MR. ASHER: Your Honor, we will offer through  
13 Mr. Lee's testimony the declarations which he submitted in  
14 connection with this case. There are one or two statements  
15 that we would offer just on his current position at present.

16 THE COURT: Okay. What I understand is that you're  
17 gonna ask him a few introductory questions. Then you're  
18 going to offer his declarations and then that will be the end  
19 of it.

20 Is that right?

21 MR. ASHER: That's it.

22 MS. BAE: No, no, no, Your Honor. We have a couple  
23 of questions on Mr. Lee's current situation and his, you know,  
24 forecast if the injunction is lifted.

25 THE COURT: I understand that. The point is you're

1 going to ask him a set of questions. At the end of that set  
2 of questions, you're going to offer some declarations, and  
3 then that will be the end of his testimony.

4 Is that right?

5 MS. BAE: Yes.

6 MR. ASHER: That's what I intended, Your Honor.

7 THE COURT: Great. Mr. Roberts, if you are ready,  
8 those declarations will be offered.

9 You can reflect, Mr. Roberts, on your objections. I  
10 will allow, of course, on cross anything that is contained in  
11 the declarations.

12 I would note for the record taking direct testimony in  
13 the form of a declaration is utterly standard in federal  
14 court. I can't imagine there's an objection, given that  
15 Mr. Roberts has the ability to cross-examine.

16 Mr. Asher, over to you.

17 And, Mr. Lee, over to you, with thanks.

18 JIN OUK LEE,

19 having been previously duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Asher:

22 (Resumed)

23 Q. Mr. Lee, as the president and owner of Airtech, do you  
24 have a concern with respect to your company in the event that  
25 the temporary restraining order was removed and the restraint

1 against Mr. Yim was eliminated? Do you have any concerns with  
2 respect to your company if that restraint was lifted?

3 A. Yes, I am very concerned.

4 Q. Please describe your concern.

5 A. In spite of TRO, Byung Chan Yim continued to have  
6 business with Redacted and some other companies, but  
7 thanks to the TRO he is not conducting business with our main  
8 customer Redacted

9 Redacted is our biggest customer, and Redacted  
10 subcontractors are all important businesses for us. It is  
11 over Redacted of our business.

12 If Byung Chan Yim is allowed to have business with  
13 Redacted and -- then my company might have to go out of business  
14 and two-third of my employees will have to be let go.

15 MS. BAE: Your Honor, if I may interject, I speak  
16 fluent Korean and English. Ms. Interpreter missed out on one  
17 of the things that the witness testified.

18 THE COURT: That's actually not appropriate in this  
19 context. What you can do, Ms. Bae, if you believe there is an  
20 issue, is you can communicate directly to your co-counsel and  
21 you can ask him to put an additional narrower or different  
22 question to the witness.

23 The witness is sworn and -- the Interpreter is sworn  
24 and she is the Interpreter. If there is an additional  
25 question in light of your concerns you want to put to your

1 colleague to slide to him as a question that he, the  
2 questioning attorney, might ask, you can do that; but you  
3 can't offer commentary on the caliber of the Interpreter.  
4 Thank you.

5 THE INTERPRETER: Actually, I'd like to add that I  
6 look at my note again. I'd like to re-render. Because --

7 THE COURT: Hold on for a second. Hold on. This  
8 can't be a back and forth that causes changing of minds or  
9 words.

10 What I'm going to say, Ms. Interpreter, is don't do  
11 that.

12 Mr. Asher, re-ask the question. Let's get the answer.

13 Ms. Bae, you can't -- questions can be put by lawyers,  
14 but commentary cannot be offered on the Interpreter, on  
15 anything else. The lawyers ask questions.

16 If you'd like to assist your colleague with asking a  
17 question, you can do that, but there's no commentary of any  
18 kind and the interpretation is not an exception to that.  
19 Thank you.

20 Mr. Asher, why don't you put a question.

21 MR. ASHER: Thank you, Judge.

22 BY MR. ASHER:

23 Q. How can Mr. Yim take away business from your company at  
24 Hanwha, both in terms of Hanwha itself and with respect to its  
25 subsidiary customers?

1 A. The most important reason is that he has information  
2 about all our credentials and our data. He can easily quote  
3 better prices to our customers. That's why he can take away  
4 our business. Trade secrets and data -- he has all our trade  
5 secrets and data.

6 Q. Briefly describe the trade secrets you're referring to.

7 A. There are two broad categories of our trade secrets, as  
8 discussed yesterday. As I mentioned yesterday, the first one

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Redacted

14 Q. Where was that contained? I'm referring to the data.

15 THE COURT: Mr. Asher, before you put another  
16 question, would it be okay if I asked a clarifying question,  
17 or would you prefer I don't? I leave it to you.

18 MR. ASHER: No problem, Judge. Thank you.

19 THE COURT: Mr. Asher, thank you.

20 I want to ask one thing about the pricing and history  
21 data. If Mr. Yim stole all of the pricing and history data a  
22 couple of years ago, why would that information have any  
23 practical impact today?

24 THE WITNESS: It might be a lengthy explanation.  
25 Would it be okay?

1 THE COURT: Yes.

2 THE WITNESS: Related to the characteristic, our

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# Redacted

So if Byung Chan Yim uses our old data and interferes or gets in with a lower quote with competitive pricing for the second order or a third order and he has the vendor information, then he can search for unknown vendor and submit that quote. We will lose our order. That's why data is important.

And yesterday Byung Chan Yim testified that the price changes every day and history is useless and he doesn't need it. That is -- that statement applies to only very limited items, especially very low-priced items.

And in the perspective of the whole business, if we were to discuss the ratio of amount, it will be made perhaps 1 percent to 20 percent. That is possible but practically there are some parts that's 1 cent or .001 cent parts and also \$1 parts and \$2 parts. But for most of the business that has substantial price, that statement doesn't apply. For these reasons history of the vendor and price is important.

And from the perspective of customers, for each customer for all parts there is customer part number. And each -- and per customer part number there are alternative

1 parts numbers connected to each customer part number and there  
2 are several of alternative part numbers.

3 So customer's part number -- for example, if a  
4 customer's part number is 1A, in that A there is part number  
5 from Manufacturer B and Manufacturer D, so all these parts are  
6 possible to be used to -- the decision to which part to use is  
7 made by the customer, and this type of information is not  
8 available unless you have previous history.

9 And we are not a broker. Byung Chan Yim said he was a  
10 broker yesterday, but we are not a broker. We are a dealer  
11 and distributor who buys products under our responsibility and  
12 we participate in developing the product for customers and we  
13 make sure that the product satisfies the requirements from the  
14 customer and then we supply the product.

15 And if there is a problem with the product, we are  
16 responsible. We are a distributor and dealer, not a broker.

17 You know, when we submit our quote to our customer,  
18 sometimes we get the order, sometimes we don't. In those

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Redacted

For this reason I keep all my data from the date that I

1 started this business in 2003, so it's -- Redacted

2 Redacted

3 data, it is very easy and possible that that person will take  
4 away our order, our next order.

5 THE COURT: Thank you.

6 Mr. Asher, do you want to resume your questioning.

7 MR. ASHER: Thank you. I have one or two other  
8 questions, Your Honor, then introduce the declarations.

9 BY MR. ASHER:

10 Q. What is the gross revenue of your company for the years  
11 2021, '22, and '23?

12 A. I don't recall the exact numbers, but I think it was

13 Redacted  
14 Redacted

15 represented by business directly with Redacted and the  
16 percentage that represents sales from its subsidiaries?

17 A. With Redacted directly, Redacted

18 Redacted  
19 Redacted  
20 Redacted

21 Q. I'd like to show you a document pre-marked Plaintiff's 2.  
22 This is a declaration which you gave in this case in support  
23 of a motion for injunctive relief dating back to March 2021.

24 Have you had an opportunity today to review this?

25 A. Yes.

1 Q. I'm turning to page 22 of it.

2 Is that your signature?

3 A. Yes, it is.

4 MR. ASHER: I'd offer a pre-marked Plaintiff's 2 into  
5 evidence.

6 THE COURT: Mr. Roberts.

7 MR. ROBERTS: My objections are limited to the  
8 following:

9 Paragraphs 70, 71, and 72. Those three paragraphs  
10 contain hearsay statements that he's repeating the quotes from  
11 other people he spoke to, so I would move to strike the  
12 hearsay. One.

13 Two, none of the attachments, the exhibits, should be  
14 offered. They're all hearsay documents. One in particular is  
15 an expert report which was expressly not admitted into  
16 evidence yesterday.

17 Those would be my limited objections.

18 MR. ASHER: My response, Your Honor, specifically  
19 with respect to those communications referred to at paragraph  
20 60s and 70s of the declaration --

21 THE COURT: Hang on for one second, if you don't  
22 mind. Let's just go through it. I want to just look at the  
23 paragraphs that Mr. Roberts has an objection to.

24 Mr. Roberts, say the paragraphs again, if you don't  
25 mind.

1 MR. ROBERTS: 70, 71, and 72, those three only.

2 THE COURT: 70. Can we get a look at 70, please?

3 MR. ASHER: In 70 --

4 THE COURT: Hang on. I just want to read it.

5 Scroll, please, so I can see the whole thing, whoever  
6 is controlling it. Stop there. Thank you.

7 (Brief pause.)

8 THE COURT: Okay. You object also to 71,  
9 Mr. Roberts?

10 MR. ROBERTS: Correct, Your Honor.

11 THE COURT: Okay.

12 (Brief pause.)

13 THE COURT: And 72?

14 MR. ROBERTS: Correct, Your Honor.

15 THE COURT: Okay. Hang on a second.

16 (Brief pause.)

17 THE COURT: Okay. I'm going to overrule the  
18 objection. Obviously this is not the kind of thing that would  
19 likely come in at a jury trial; but, A, this is not a jury  
20 trial, and, second of all, the factfinder is not a jury.

21 I think there are light indicia of credibility here in  
22 the sense that the statements are interlocking, they tend to  
23 suggest the same thing, they are not overly detailed, which  
24 gives me less pause from a 403 perspective.

25 There's also an argument that some of this is not

1 offered for the truth, although much of it I suspect is. More  
2 fundamentally, Mr. Roberts will have an opportunity to cross  
3 in just a few moments as to the foundational basis of any of  
4 this, and I'm capable of discounting this testimony because  
5 much of it does look like it's hearsay on its face.

6 I'm permitted to consider hearsay, but we should all be  
7 perfectly clear that I'm going to discount its import in my  
8 thinking by a substantial amount.

9 So with those parameters, Mr. Roberts' objection to 70,  
10 71, and 72 of the declaration is overruled.

11 (Plaintiff's Exhibit No. 2 was received in  
12 evidence.)

13 Mr. Roberts, you have other objections?

14 MR. ROBERTS: Yes, Your Honor. I object to the  
15 attachments. They are all hearsay documents. There are -- no  
16 foundations laid. One of them was an expert report that was  
17 expressly excluded from evidence yesterday.

18 THE COURT: Let's just go to -- I don't know what  
19 those exhibits are. If we could look at them, please, for  
20 whoever is controlling the screen, that would be helpful.

21 (Brief pause.)

22 MR. ASHER: Generally, while the screening takes  
23 place, Your Honor, I note that they are business records,  
24 which apparently Mr. Roberts had no trouble with the admission  
25 of business records yesterday.

1 THE COURT: Let me see the attachments, please.

2 MR. ROBERTS: Which letter is this, please?

3 MS. BAE: This is A.

4 MR. ROBERTS: No objection to A.

5 THE COURT: No objection to A. It's in.

6 MS. BAE: These are the --

7 THE COURT: Hold on, hold on, hold on. You don't  
8 need to characterize it. Let me see what B is.

9 MR. ROBERTS: No objection to B.

10 THE COURT: No objection to B. It's in evidence.  
11 Let's keep going.

12 MR. ROBERTS: No objection to C.

13 THE COURT: C is in evidence. Let's keep going.

14 MR. ROBERTS: This I object to with its -- okay. I  
15 can't see it anymore.

16 MS. BAE: These are the --

17 THE COURT: Hold on, hold on, hold on.

18 Does the declaration say anything about what D is?

19 MS. BAE: Yes, it does, Your Honor.

20 THE COURT: Can you please put up what it says about  
21 D?

22 MR. ROBERTS: I withdraw my objection. It's a  
23 summary of evidence.

24 THE COURT: Okay. Let's move on to E, please.

25 (Brief pause.)

1 MR. ROBERTS: No objection.

2 THE COURT: It's admitted. A, B, C, D, and E,  
3 exhibits to the current document, are in evidence. Exhibit F.

4 MR. ROBERTS: Objection; expert report that was  
5 previously ruled upon by the Court.

6 THE COURT: Let's bracket F. Let's keep going. G.

7 (Brief pause.)

8 MR. ROBERTS: No objection.

9 THE COURT: G is in evidence. H.

10 MR. ROBERTS: That's a business record. No  
11 objection.

12 THE COURT: H is in evidence.

13 MS. BAE: I.

14 MR. ROBERTS: Same.

15 THE COURT: I is in evidence.

16 MR. ROBERTS: Same.

17 THE COURT: J is in evidence.

18 MR. ROBERTS: Same.

19 THE COURT: K is in evidence.

20 (Brief pause.)

21 THE COURT: Mr. Roberts, L-1?

22 MR. ROBERTS: L-1 -- well, I kind of lost my way  
23 there.

24 THE COURT: Please go back to L-1. Thank you.

25 MR. ROBERTS: Yeah. This is one of the documents

1 that's -- from what I see here is a communication that  
2 contains hearsay and it's from a party --

3 THE COURT: Okay. Mr. Roberts, I get it. We'll talk  
4 about all the ones you have an objection to together. L-1 you  
5 object to. What about L-2?

6 MR. ROBERTS: May I see it, please.

7 (Brief pause.)

8 MR. ROBERTS: Same, same objection.

9 THE COURT: Okay. Let's move to the next exhibit.

10 MR. ROBERTS: Business record. I don't have an  
11 objection.

12 THE COURT: M is in evidence.

13 (Brief pause.)

14 MR. ROBERTS: To me, Your Honor, foundation hasn't  
15 been laid for this as it doesn't convey communication with my  
16 client and it also is hearsay. Same objection as earlier.

17 THE COURT: This is Exhibit N; is that correct?

18 MS. BAE: N, as in "Nancy," yes, Your Honor.

19 THE COURT: N we'll deal with.

20 Keep going, please.

21 (Brief pause.)

22 THE COURT: O-1.

23 MR. ROBERTS: I don't know what the document  
24 represents.

25 MS. BAE: This is a wire that Airtech had paid to

1 Sensa Technetics, one of the sham companies of Mr. Yim.

2 MR. ROBERTS: I don't object.

3 THE COURT: Okay. It's in evidence. That is  
4 Exhibit O.

5 MS. BAE: O-2.

6 THE COURT: O-1. So that was O-1 in evidence. We  
7 are now looking at O-2 for Mr. Roberts' position.

8 MR. ROBERTS: None, Your Honor.

9 THE COURT: O-2, no objection, in evidence. Next  
10 exhibit, P-1.

11 Mr. Roberts.

12 MR. ROBERTS: It's a wire confirmation. No  
13 objection.

14 THE COURT: P-1 is in evidence. Next exhibit.

15 MS. BAE: P-2.

16 MR. ROBERTS: No objection.

17 THE COURT: P-2 is in evidence.

18 MS. BAE: Q.

19 MR. ROBERTS: No. Wire confirmation.

20 THE COURT: Q is in evidence. R.

21 MR. ROBERTS: Same. No.

22 THE COURT: No objection from Mr. Roberts. R is in  
23 evidence.

24 MS. BAE: S.

25 MR. ROBERTS: Same.

1 THE COURT: In evidence. S is in evidence.

2 MS. BAE: T.

3 MR. ROBERTS: Is this a wire confirmation?

4 MS. BAE: Yes, to RFWave.

5 MR. ROBERTS: That's fine.

6 THE COURT: T is admitted into evidence without  
7 objection from Mr. Roberts.

8 MS. BAE: This is U.

9 MR. ROBERTS: Another wire confirmation?

10 MS. BAE: Yes.

11 MR. ROBERTS: Okay.

12 THE COURT: Mr. Roberts conveying that he has no  
13 objection, U is in evidence.

14 MR. ROBERTS: It's a check. No objection.

15 THE COURT: What exhibit is this?

16 MS. BAE: V, I believe, Your Honor.

17 THE COURT: V is in evidence without objection from  
18 Mr. Roberts.

19 MS. BAE: That's all the exhibits, Your Honor.

20 THE COURT: So we have four -- this is the final  
21 exhibit, the one that's currently on the screen.

22 What is the exhibit number of the last exhibit?

23 MS. BAE: V, Your Honor.

24 THE COURT: V is in evidence.

25 Let's go back. We have four that are an issue. Let's

1 start with exhibit N, as in "Nancy."

2 (Brief pause.)

3 MR. ASHER: Show the first page.

4 THE COURT: This is an e-mail from someone who works  
5 at a company to someone who is at Airtech.

6 Who is that someone?

7 MS. BAE: This is one of our vendors, **Redacted** writing  
8 to Richard at Airtech. Richard is not one of the witnesses  
9 that will be testifying.

10 THE COURT: What's attached to it is a quote?

11 Mr. Roberts, you object to this?

12 MR. ROBERTS: I'll withdraw my objection, Your Honor.  
13 It's not worth getting -- I'll withdraw it, Your Honor.

14 THE COURT: N is in evidence.

15 We have L-2.

16 (Brief pause.)

17 MS. BAE: This is an e-mail from Assured Components,  
18 the one that Defendant Yim made to compete with Airtech, and  
19 he made this false persona Jasmine Legrant. He testified at  
20 deposition that that was actually himself that was writing  
21 these e-mails to **Redacted** one of our protected customers. So  
22 he was dealing with Unione as early as --

23 THE COURT: Ms. Bae, is it your proffer that there's  
24 deposition testimony that one of the two defendants testified  
25 that he wrote -- he created Assured and sent e-mails from that

1 account?

2 MS. BAE: Yes, Your Honor.

3 THE COURT: Mr. Roberts, then that seems to clearly  
4 come in.

5 MR. ROBERTS: Only to the -- Your Honor, that's fine.  
6 I'll just note my objection for the record. Only to the  
7 extent that this was not explored and the foundation wasn't  
8 properly laid, but that's fine, Your Honor.

9 THE COURT: Well, you mean the foundation wasn't laid  
10 during --

11 MR. ROBERTS: By anybody.

12 THE COURT: I understand that point. But I also said  
13 at the beginning today that I'm going to allow people to offer  
14 materials that came up in the course of the gathering of  
15 evidence in discovery.

16 So I fully expect that the plaintiff will take that  
17 invitation and put in the deposition testimony that was just  
18 alluded to by Ms. Bae and that will lay the foundation. This  
19 comes in subject to connection, which is to say subject to  
20 Ms. Bae and her colleagues offering that deposition testimony.

21 Whether or not that matters anyway, I don't know,  
22 because, of course, the Rules of Evidence don't formally apply  
23 here. But subject to that piece of connection, I'm admitting  
24 L-2.

25 MR. ROBERTS: Fair enough, Your Honor. I just note

1 my objection.

2 THE COURT: Mr. Roberts, fair enough. I see where  
3 you're coming from. L-1.

4 Mr. Roberts, tell us, given what I just said, whether  
5 you have a continued objection to L-1.

6 MR. ROBERTS: It's the same objection. And half  
7 of it is in Korean. I would have preferred that a proper  
8 foundation had been laid and been introduced appropriately;  
9 but given Your Honor's ruling, I respectfully do not withdraw  
10 the objection but I understand the Court's ruling.

11 THE COURT: I understand where you're coming from and  
12 it's subject to connection. To the extent you have an  
13 objection to the translation, Mr. Roberts, or the lack of  
14 translation, the plaintiff will be directed to provide a  
15 translation to the extent it wishes to rely on the current  
16 language text in this item.

17 That leaves us with one final exhibit to the  
18 declaration as to which Mr. Roberts has objected which is the  
19 expert report. Let's go there, please.

20 (Brief pause.)

21 THE COURT: Let me just read this for a moment. Can  
22 you just go to page 1?

23 (Brief pause.)

24 THE COURT: Page 2, if you don't mind. Stop there,  
25 please.

1 (Brief pause.)

2 THE COURT: Scroll down, please, to "Analysis and  
3 Findings." Thank you.

4 (Brief pause.)

5 THE COURT: Next page, page 4, please.

6 (Brief pause.)

7 THE COURT: Next paragraph, please, the one that  
8 begins: "The second partition..."

9 (Brief pause.)

10 THE COURT: Then the conclusion, please.

11 (Brief pause.)

12 THE COURT: Okay. Mr. Roberts, you continue with  
13 your objection to this document?

14 MR. ROBERTS: Yes, Your Honor. It's not even  
15 supported by a certification of the expert. It's a hearsay  
16 document. I can't cross-examine it.

17 To introduce expert opinion it's clearly being asserted  
18 for the truth of its content without having the ability to vet  
19 it, nor is it supported by anything sworn. Yes, I maintain my  
20 objection, Your Honor.

21 THE COURT: Mr. Asher.

22 MR. ASHER: The basis of that, in the aggregate it  
23 represents an incorporated portion of defendant's admission  
24 that this is exactly what he did to the computer, which set  
25 forth in technical detail. And under oath he admitted at his

1 deposition that -- he simply said in one or two words that,  
2 yes, what's set forth in the report is correct.

3 He is a demonstrated long-term IT expert himself. He  
4 pretty much qualified himself in more sinister substantial  
5 ways that are the subject matter of this case. He did this  
6 work, he admitted every part of it under oath, and then he  
7 agreed to the report, to the conclusions set forth in the  
8 report.

9 On that basis, we couldn't have a better expert -- a  
10 better basis for an introduction of an incorporation of his  
11 own admission in terms of what he did as a fact witness in the  
12 case.

13 THE COURT: The objection is sustained. There is no  
14 doctrine of evidence that says because you believe you got a  
15 piece of information from one person you get to then admit  
16 other evidence that doesn't have an appropriate evidentiary  
17 basis.

18 If your argument, Mr. Asher, is that this expert report  
19 confirms what testimony you believe you got yesterday, that  
20 may be an interesting argumentative point but it's not a basis  
21 for admitting this separate expert report.

22 Admitting a report like this, in my judgment, needs to  
23 come in through people who participated in the preparation of  
24 this report and not simply through the person who paid for,  
25 commissioned this report, which is to say the witness who is

1 currently on the stand, or in a bootstrap manner by saying  
2 that the expert report's conclusions seem, in your judgment,  
3 to link up with some other evidence that came in in the course  
4 of the proceeding.

5 So the objection is sustained, and the expert report  
6 does not come in.

7 Mr. Asher, anything else with this witness before  
8 Mr. Roberts initiates cross?

9 MR. ASHER: I wanted to introduce some further of his  
10 declarations in this case.

11 THE COURT: Okay.

12 MR. ASHER: I'd like to at this point to offer into  
13 evidence -- the next one is...

14 Thank you, Mr. Lee.

15 Your Honor, he has the other exhibits in front of him.  
16 In this instance it is -- which I'd like to offer into  
17 evidence is PX-37. This is Mr. Lee's reply declaration in  
18 further support of the motion for injunctive relief.

19 It is -- without exhibits, it's a three-page  
20 declaration signed March 21, 2022.

21 THE COURT: Mr. Roberts.

22 MR. ROBERTS: Your Honor, in the interest of  
23 conserving resources today, I will not object to the document.  
24 I would like to respectfully emphasize on the record that I'm  
25 not waiving any of my arguments as it goes to weight,

1 adequacy, hearsay.

2           Given that, I'm observing how the Court is conducting  
3 the process. I won't object, but I just want to make known to  
4 the Court that I preserve my arguments on the weight,  
5 adequacy, and sufficiency of the evidence in its present form.

6           THE COURT: I appreciate that. First of all, this  
7 declaration is going to come into evidence.

8           Second of all, Mr. Roberts, I completely understand  
9 what you're saying, and we should all be clear between the  
10 parties. There is no doubt, no doubt that information that is  
11 admissible in this proceeding that is hearsay or that is not  
12 crossed is subject to strong critique in terms of the weight  
13 that it gets.

14           And so if Mr. Roberts on the one side or Mr. Asher on  
15 the other side wants to make arguments in follow-on briefing  
16 about certain evidence just being admitted but being worth  
17 very little because it's hearsay or because it's not crossed,  
18 those arguments are ones that -- whether or not Mr. Roberts  
19 had reserved just now would be open to both sides to make.  
20 The declaration is in.

21           (Plaintiff's Exhibit No. 37 was received in  
22 evidence.)

23           MR. ROBERTS: Your Honor, may I request the exercise  
24 of just looking at the exhibits?

25           THE COURT: Of course. I thought there were no

1 exhibits to this. Forgive me.

2 MR. ASHER: In this particular instance, that's  
3 correct. However, the next one that I would offer into  
4 evidence is Plaintiff 149 for identification, along with its  
5 exhibits, into evidence. 149 and --

6 THE COURT: Why don't you give Mr. Roberts as much  
7 time as he needs to look through the substance of the  
8 declaration and also to look through the exhibits so he can  
9 offer any objections he might have.

10 MR. ROBERTS: I'm going to take the same position on  
11 the declaration for the purpose of expediency. I do want to  
12 look at the exhibits.

13 THE COURT: Okay. So the declaration is in, and  
14 Mr. Roberts will review the exhibits and give us his  
15 permission -- his position on each of the exhibits.

16 (Plaintiff's Exhibit No. 149 was received in  
17 evidence.)

18 BY MR. ASHER:

19 Q. Beyond going to the next one, let me just confirm that in  
20 the case of Plaintiff's 37 received into evidence a few  
21 minutes ago, Mr. Lee, that's your signature? You gave this  
22 declaration in connection with the case?

23 MR. ROBERTS: It's in.

24 A. Yes.

25 THE COURT: Mr. Asher, we're past that moment. The

1 declaration has not been objected to by Mr. Roberts. The  
2 declaration is in. We are now reviewing the exhibits so  
3 Mr. Roberts can supply his position as to the admissibility of  
4 them.

5 MR. ASHER: Okay.

6 MR. ROBERTS: I don't know what this is.

7 MS. BAE: This is an e-mail from Mr. Yim to one of  
8 our --

9 MR. ROBERTS: No objection.

10 MS. BAE: Exhibit A is in.

11 THE COURT: Exhibit A was admitted without objection  
12 from Mr. Roberts. Let's go to Exhibit B, please.

13 MS. BAE: This is a letter from Airtech to someone at  
14 Hanwha.

15 MR. ROBERTS: It looks like a business record of  
16 Airtech's, so I don't object.

17 THE COURT: Exhibit B, no objection from Mr. Roberts.  
18 It's in.

19 Exhibit C, please.

20 MR. ROBERTS: No objection.

21 THE COURT: Exhibit C is in evidence.

22 Exhibit D, please.

23 (Brief pause.)

24 MR. ROBERTS: No objection.

25 THE COURT: No objection. Let's go to the next

1 exhibit, please.

2 MR. ROBERTS: I note that the prior exhibit was not  
3 authenticated through my witness or anyone at Hans Aerospace.  
4 Just for the record, I note that. I'm not going to object,  
5 but I'm just preserving. Even though it's probably not  
6 necessary, I'm doing it anyway.

7 THE COURT: We're on Exhibit E.

8 (Brief pause.)

9 MS. BAE: Exhibit E.

10 MR. ROBERTS: I'll reserve my hearsay arguments, no  
11 objection.

12 THE COURT: Exhibit E is in evidence without  
13 objection from Mr. Roberts. Exhibit F.

14 (Brief pause.)

15 MR. ROBERTS: None.

16 THE COURT: Exhibit F is in evidence without  
17 objection from Mr. Roberts. Exhibit G.

18 MS. BAE: This is the last exhibit, Your Honor.

19 THE COURT: Are there any more declarations?

20 MS. BAE: Yes, Your Honor.

21 MR. ASHER: We have about three or four items right  
22 now.

23 THE COURT: What do you mean "items?"

24 MS. BAE: Three more declarations, Your Honor.

25 THE COURT: Okay. Is that the end of the witness's

1 testimony?

2 MR. ASHER: When those remaining three items are  
3 addressed, it will be the end.

4 THE COURT: Great. Okay. Let's get to it, then.  
5 Thank you.

6 MR. ASHER: The next one, Your Honor, is PX-156 for  
7 identification.

8 THE COURT: Let's give Mr. Roberts time to review the  
9 declaration before we get to any exhibits so he can state  
10 whether he has objections to any paragraph in the declaration.

11 MR. ASHER: As he reviews it, Your Honor, I'll just  
12 for the record note this is Mr. Lee's declaration in  
13 opposition to the motion to modify the temporary restraining  
14 order which was filed June 7, 2022, and there are a number of  
15 exhibits attached to it.

16 MR. ROBERTS: I'm going to take the same position.  
17 I'm not going to waive on anything, as the Court fully  
18 recognizes. We will not waive as to adequacy, sufficiency,  
19 foundation in terms of its weight.

20 For expedience purposes and how the Court --  
21 respectfully, how the Court is conducting the proceeding, I  
22 respect that, I'll waive my objection to its entry. However,  
23 I do want to look at the exhibits because I think that's  
24 important.

25 THE COURT: Mr. Roberts has waived his objection to

1 the admission of the declaration we're looking at. He has  
2 emphatically and understandably preserved his objection to the  
3 weight. The declaration is in, and we're now looking at  
4 Exhibit A.

5 (Plaintiff's Exhibit No. 156 was received in  
6 evidence.)

7 MR. ASHER: Including the exhibits. We're now  
8 reviewing the exhibits to the declaration itself, Your Honor.

9 THE COURT: Yes. Exhibit A.

10 MR. ROBERTS: I won't stipulate to its accuracy. It  
11 could be accurate, but I'm not going to object.

12 THE COURT: Exhibit A is in without objection.

13 (Brief pause.)

14 MR. ROBERTS: I object.

15 MR. ASHER: What's the basis of the objection?

16 THE COURT: Mr. Asher, this is a privileged  
17 settlement communication. How can this possibly come into  
18 evidence?

19 MR. ASHER: No, Your Honor, this is from our law firm  
20 with Defendant Yim. This is making --

21 THE COURT: The first sentence says it's a privileged  
22 settlement communication.

23 MR. ASHER: All right. Very good.

24 MR. ROBERTS: This is entirely inappropriate.

25 MR. ASHER: A very clear statement at the header.

1 That's true.

2 THE COURT: Do you withdraw your offer that Exhibit B  
3 comes into evidence?

4 MS. BAE: Yes, Your Honor.

5 THE COURT: Exhibit B is withdrawn.  
6 Go to Exhibit C, please.

7 (Brief pause.)

8 MR. ASHER: We make the proffer and we have your  
9 ruling as to Exhibit C with respect to the expert report.

10 MS. BAE: Exhibit C is out.

11 THE COURT: Exhibit C is withdrawn.  
12 Let's go to Exhibit D. This is D-1.

13 (Brief pause.)

14 MR. ROBERTS: I don't object.

15 THE COURT: Without objection, D-1 is in evidence.  
16 We're at D-2.

17 Mr. Roberts?

18 MR. ROBERTS: No objection.

19 THE COURT: Without objection, D-2 is in evidence.

20 MR. ROBERTS: No objection.

21 THE COURT: Exhibit E. Mr. Roberts, any objection to  
22 Exhibit E?

23 MR. ROBERTS: No.

24 THE COURT: E is in evidence without objection.  
25 Next.

1 MR. ASHER: The last exhibit, Your Honor, was already  
2 received into evidence yesterday.

3 MR. ROBERTS: No objection.

4 THE COURT: Okay. It's received again with no  
5 objection.

6 Next declaration, if any, Mr. Asher.

7 MR. ASHER: The next one, Your Honor, is PX-169. I  
8 would offer it into evidence. This is a declaration of Jin O.  
9 Lee in opposition to modify injunction.

10 THE COURT: Mr. Roberts, take a look.

11 MR. ROBERTS: I don't object to the declaration.  
12 We'll look at the exhibits.

13 THE COURT: With that objection, the declaration  
14 itself is in, and we will now look to the exhibits.

15 (Plaintiff's Exhibit No. 169 was received in  
16 evidence.)

17 THE COURT: Exhibit A, Mr. Roberts. This is a  
18 redacted version of a document we have seen before and a  
19 document that is in evidence, I think.

20 MR. ASHER: That is correct, Your Honor.

21 MR. ROBERTS: Your Honor, I did not -- this was never  
22 offered, and I would have objected if it was.

23 THE COURT: Got it. Mr. Roberts, what's your  
24 position on this? You object?

25 MR. ROBERTS: This is created for the purposes of

1 litigation. It's their opinion as to what's protected or  
2 proprietary. There has been zero attempt by any witness in  
3 this case to demonstrate that these are in fact proprietary or  
4 protected, which is precisely why we're here, to determine  
5 whether or not -- in my view and how I read the applicable  
6 case law that's evolving in the district, this is the issue,  
7 the core issue.

8 To make a representation to the Court about the core  
9 issue and say that 842 items are -- which have not been vetted  
10 by the Court since the TRO was issued ex parte -- to thrust  
11 this into evidence without a proper foundation, which is  
12 created for the purposes of litigation as a hearsay document  
13 without any technical or appropriate foundation to support the  
14 truth of it, I object.

15 THE COURT: Mr. Asher.

16 MR. ASHER: Your Honor, could we pause on this issue  
17 concerning Exhibit A? This is a redacted version of  
18 Plaintiff's 180, which was also the subject of testimony  
19 yesterday and then --

20 THE COURT: Mr. Asher, let me pause you for a second.  
21 Is your proffer that Exhibit A on the screen is the redacted  
22 version of Plaintiff's Exhibit 180?

23 MR. ASHER: Yes, that's correct.

24 THE COURT: With that understanding, why don't you --  
25 I am sure Mr. Roberts, then, has the same objection, whether

1 it's Exhibit A with redactions or Plaintiff's Exhibit 180.

2 Why don't you tell us, Mr. Asher, how you respond to  
3 his objections, whether they run to Exhibit A or Plaintiff's  
4 Exhibit 180, in fact they run to both.

5 MR. ASHER: The data that's set forth -- of course  
6 this is sworn to by -- itself by Mr. Lee. He is here and can  
7 examine on the verification that is set forth on page 4 of  
8 Plaintiff's 180 for identification. And he sets forth in his  
9 verification exactly what it is.

10 The document itself makes clear in furtherance of the  
11 descriptions in his verification. It lays out in considerable  
12 detail -- now, this is the plaintiff's record of their  
13 documents that were collected in the ordinary course of  
14 business.

15 There's also references to, for example, exclusive  
16 agreements, which have also been --

17 THE COURT: Mr. Asher, let me pause you for just one  
18 moment.

19 Mr. Roberts, do you have any objection to a document  
20 that would come in that has: Vertical column name, vertical  
21 column item, vertical column description, vertical column  
22 customer, or vertical column program?

23 MR. ROBERTS: Well, yes, I object to this  
24 particular -- he has redacted this one, but the objection  
25 would be the same. This was created for the purposes of this

1 case. It was -- I don't know how. It hasn't been explored.

2 This isn't a business record, and it's not represented  
3 being one. This is a list --

4 THE COURT: I got it. There's two objections here.  
5 One is the business record objection, one is an objection, as  
6 I understand it, Mr. Roberts, to the conclusoriness of the  
7 last column, the vertical column marked "category."

8 I just wanted to understand whether you had both  
9 objections or just one.

10 Mr. Asher, over to you to explain why this comes in, if  
11 at all.

12 MR. ROBERTS: Your Honor, I just want to note that it  
13 says "proprietary" at the top, Your Honor.

14 MR. ASHER: Well, that's our --

15 THE COURT: Yes, yes, understood.

16 MR. ASHER: It's, I believe, subject -- it's a  
17 dispute but the data within the columns are factual,  
18 straightforward information collected in the ordinary course  
19 of business.

20 THE COURT: But, Mr. Asher, who created this  
21 document?

22 MR. ASHER: This was prepared by one of our  
23 witnesses, Mr. Daniel Chun.

24 THE COURT: Will he testify?

25 MR. ASHER: Yes. Today.

1 THE COURT: At the moment, I'm going to reserve on  
2 whether Plaintiff's Exhibit 180 or Exhibit A come in. If  
3 you'd like to try and lay a foundation through that witness,  
4 you can and we'll take it from there. Let's move on.

5 MR. ASHER: Yes. Thank you very much, Your Honor.

6 MS. BAE: Thank you, Your Honor.

7 MR. ASHER: Then let's move on to the retaining  
8 exhibits in this remaining declaration which we already  
9 touched upon in Plaintiff's 169, going to Exhibit B. They're  
10 about maybe four or five remaining exhibits.

11 THE COURT: Exhibit B, Mr. Roberts, your position?

12 MR. ROBERTS: Same. I'm happy to review the exhibits  
13 with the Court.

14 THE COURT: You mean you have no objection to the  
15 admission but you're going to reserve your right to argue that  
16 they should be considered essentially worthless?

17 MR. ROBERTS: You're correct.

18 THE COURT: Okay. Exhibit B is in.

19 (Brief pause.)

20 MR. ROBERTS: No objection.

21 THE COURT: Exhibit C is in.

22 (Brief pause.)

23 THE COURT: Exhibit D, Mr. Roberts?

24 MR. ROBERTS: No objection.

25 THE COURT: It's in evidence, Exhibit D in evidence.

1 (Brief pause.)

2 THE COURT: Exhibit E, Mr. Roberts?

3 MR. ROBERTS: Can you just move up?

4 No objection. I'll make arguments later.

5 THE COURT: Exhibit F.

6 (Brief pause.)

7 THE COURT: Mr. Roberts?

8 MR. ROBERTS: Your Honor, this contains information  
9 between witnesses that haven't testified, and clearly it's  
10 hearsay, for one, so I would object and not understanding the  
11 purpose of --

12 THE COURT: Go back to the top, please, of F.

13 (Brief pause.)

14 THE COURT: Scroll down, please.

15 (Brief pause.)

16 THE COURT: Scroll down.

17 (Brief pause.)

18 THE COURT: I can't even -- so this is an e-mail  
19 chain that purports to include an e-mail from your client,  
20 Mr. Roberts?

21 MR. ROBERTS: Well, the top one does not -- you know  
22 what, I'll withdraw my objection.

23 THE COURT: Okay. This is in evidence. Let's keep  
24 going.

25 Mr. Roberts, Exhibit G?

1 MR. ROBERTS: No objection.

2 THE COURT: It's in evidence. Let's keep going.

3 Exhibit H. Mr. Roberts, your view? Not "your view,"  
4 your position.

5 MR. ROBERTS: Yes, Your Honor. No objection.

6 THE COURT: It's in evidence.

7 Let's go to the next one, if any. Let's go to the next  
8 one, if any, please.

9 MS. BAE: For some reason or another, it froze,  
10 Your Honor.

11 THE COURT: Okay. I think it's because we have so  
12 many open.

13 (Brief pause.)

14 MS. BAE: 178.

15 MR. ASHER: It's 178?

16 MS. BAE: Yes.

17 (Brief pause.)

18 MS. BAE: For some reason or another --

19 THE COURT: Here is what I would propose: I assume  
20 Mr. Roberts would appreciate a short break before commencing  
21 his cross of Mr. Kim.

22 Am I right about that, Mr. Roberts?

23 MR. ROBERTS: You're correct.

24 THE COURT: It's now 12:15. Why don't we get on at  
25 12:35. At 12:35 we'll finish up all of the exhibits and we

1 will -- as soon as that's done, Mr. Roberts can begin his  
2 cross. Let's not make it 12:35. Let's give a little more  
3 time. Let's make it 12:45. We'll say 12:45 and get back on.

4 I'll ask my Courtroom Deputy to reiterate anything that  
5 needs to be said about staying on the line and muting.

6 THE DEPUTY CLERK: Counsel, you can stay on the line.  
7 Just mute yourselves and disengage the video. Just don't  
8 delete from the session.

9 THE COURT: Thank you very much, and thanks to  
10 everyone. We'll be back on at 12:45.

11 (Recess taken.)

12 THE COURT: Mr. Asher, let's get the documents  
13 handled.

14 MR. ROBERTS: My apologies. I was sitting here the  
15 whole time. I just didn't realize the --

16 THE COURT: All good, Mr. Roberts.

17 Mr. Asher, over to you. Mr. Asher, if you're speaking,  
18 we cannot hear you.

19 MR. ASHER: Your Honor, what I was saying --  
20 excuse me, I didn't pay proper attention to it.

21 Exhibit I is the last of the two exhibits. This is the  
22 one where the system froze right before the break. This one  
23 is an e-mail from Eric Alvarez of Mr. Roberts' law firm.

24 MS. BAE: Mr. Roberts is cc'd.

25 THE COURT: Mr. Roberts, your position?

1 MR. ROBERTS: I object. Mr. Alvarez is not a  
2 witness, I'm certainly not a witness. The person who was  
3 communicated to at Redacted sales is not a witness. I don't  
4 understand why this is being offered. I don't see the  
5 relevance, and it's clearly a hearsay document.

6 THE COURT: Sustained. Next document.

7 MR. ASHER: The final item, Exhibit J, from Hans  
8 Aerospace, the defendant's purchase orders with Redacted

9 MR. ROBERTS: I'm sorry. I can't see it.

10 THE COURT: Let's please get Exhibit J on the screen,  
11 the one that Mr. Asher just alluded to.

12 MR. ASHER: It's in front of us, Your Honor. Maybe  
13 there's a share issue.

14 MR. ROBERTS: No objection.

15 THE COURT: Okay. Exhibit J is in.

16 Mr. Asher, is that the end of the offering of exhibits  
17 in and the testimony?

18 MR. ASHER: That's correct on both counts,  
19 Your Honor. Thank you.

20 THE COURT: Mr. Roberts over to you for  
21 cross-examination or one of your colleagues.

22 MR. ROBERTS: Thank you.

23 May I ask my colleague Mr. Kamvosoulis to share the  
24 screen and put within the Court's view PX -2, please.

25 MR. KAMVOSOULIS: Sure.

1 MR. ROBERTS: Please go the to top of the document  
2 first. This is the declaration of Jin Lee that was in  
3 evidence. This particular one -- can we have the date,  
4 please, because there are many.

5 MR. ASHER: I'm sorry. You're asking us?

6 MR. ROBERTS: No, no. I'm talking to my colleague.

7 MR. ASHER: Thank you.

8 CROSS-EXAMINATION

9 By Mr. Roberts:

10 Q. Mr. Lee, good afternoon. My name is Keith Roberts. In  
11 case you haven't recognized, I'm representing the defendants  
12 in this case.

13 This is a declaration that you signed on March 1, 2022,  
14 which is in evidence.

15 Do you recall that you had made this declaration and  
16 submitted it to the Court in support of your application for  
17 temporary restraints against the defendants?

18 A. Yes.

19 Q. I want to ask you a question about a particular section.

20 MR. ROBERTS: Kindly move up to paragraph 4, please.  
21 Just for the record, I'm always speaking to Mr. Kamvosoulis  
22 when I'm asking to manipulate a document.

23 BY MR. ROBERTS:

24 Q. In paragraph 4 of the declaration, which has been marked  
25 into evidence as PX-2 --

1 THE COURT: Mr. Roberts, can I stop you for just one  
2 second?

3 MR. ROBERTS: Absolutely.

4 THE COURT: We want to save time with the Interpreter  
5 not interpreting your directions to your assistant.

6 Mr. Asher, I will assume you will agree that it's  
7 perfectly okay for the Interpreter not to translate anything  
8 that Mr. Roberts does not preface with the words "Mr. Lee."

9 Is that okay by you, Mr. Asher?

10 MR. ASHER: Yes, subject to Mr. Lee asking for  
11 clarification but generally no problem.

12 THE COURT: Great.

13 Mr. Roberts, that's fine by you; right?

14 MR. ROBERTS: It is, Your Honor.

15 THE COURT: So just say "Mr. Lee" when you have the  
16 question so we don't have to have too much extra translation.  
17 Mr. Roberts back to you. Thank you.

18 MR. ROBERTS: I will do my very best, Your Honor.  
19 Thank you.

20 BY MR. ROBERTS:

21 Q. Mr. Lee, I direct your attention to paragraph 4. Kindly  
22 read it to yourself. It will only take a second, please.  
23 Read it to yourself, and I'm going to ask you a question,  
24 please.

25 A. Yes.

1 Q. Here you indicate to the Court in the last sentence:  
2 (Reading.)

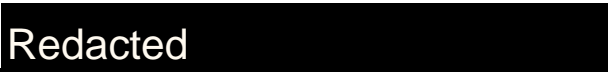
3   
4 Redacted  
5

6 Do you see that statement?

7 A. Yes.

8 MR. ROBERTS: I thought the witness had said  
9 something beyond "yes," but I guess not.

10 BY MR. ROBERTS:

11 Q. So you had made a statement to the Court at the time you  
12 signed the declaration that 

13  Redacted

14 Why did you make that statement to the Court?

15 A. It was to explain that Airtech coordinates the  
16 manufacturing and production process and handle for  
17 custom-made parts. We made that statement, and it was based  
18 on the amount -- 25 percent of the amount of our business.

19 MR. ROBERTS: Mr. Kamvosoulis, please bring me to  
20 Mr. Lee's deposition transcript at page 12, line 7.

21 (Brief pause.)

22 BY MR. ROBERTS:

23 Q. Mr. Lee, do you remember being deposed in this case  
24 previously?

25 A. Yes.

1 Q. Do you remember being asked the question:

2 "Is Airtech a manufacturer?"

3 And do you remember giving the answer -- do you  
4 remember being asked the question: "Does Airtech physically  
5 assemble any products?"

6 Do you remember giving the answer: "No, our office  
7 does not assemble anything"?

8 Do you remember giving that testimony?

9 A. Yes, I do.

10 MR. ROBERTS: Please, Mr. Kamvosoulis, go to page 20,  
11 line 13.

12 (Brief pause.)

13 BY MR. ROBERTS:

14 Q. Do you remember also in your deposition being asked the  
15 question: "Mr. Lee, in how many instances would Airtech be  
16 responsible for 100 percent of the design of the product that  
17 it sells?"

18 Do you remember giving the answer: "When you use the  
19 expression that design 100 percent, do you mean that we --  
20 without anyone else's knowledge, we create the part from  
21 scratch?"

22 Do you remember being asked the follow-up question:  
23 "Correct, yes, that's what I mean"?

24 Do you remember giving the answer: "No such product"?

25 Do you remember that testimony, sir?

1 A. Yes.

2 MR. ROBERTS: Mr. Kamvosoulis, kindly move to  
3 page 29, line 21. So first page 29, please, if you could  
4 scroll down. I can't see it all.

5 (Brief pause.)

6 BY MR. ROBERTS:

7 Q. Do you remember being asked the question beginning on  
8 page 29, line 25: "So, in other words, could you provide the  
9 technical engineer support to actually create the product"?

10 Do you remember giving the answer: "No"?

11 A. Yes, I do.

12 MR. ROBERTS: Please scroll to the top of page 30 at  
13 line 4. Actually, you'll see at page 30 at the bottom,  
14 question -- do you remember being asked: "Now we have  
15 established that Airtech" -- sorry, I have to scroll -- "does  
16 not actually manufacture any parts. Am I correct?"

17 Do you remember giving the answer: "Correct, yes"?

18 A. Yes.

19 MR. ROBERTS: I have no further questions,  
20 Your Honor.

21 MR. ASHER: We have no further questions on redirect.

22 THE COURT: Okay. Thank you very much.

23 Mr. Kim, [sic] you're excused.

24 (Witness excused.)

25 Who has the next witness?

1 MS. BAE: Mr. Boo Hyun Kang, Your Honor. The witness  
2 is outside.

3 THE COURT: Mr. Roberts, I assume, consistent with  
4 yesterday, you have no objection to Mr. Kim remaining in the  
5 room as he's the party representative.

6 MS. BAE: Your Honor, it's Mr. Lee.

7 THE COURT: I'm sorry, one more time?

8 MS. BAE: His last name is Lee, Your Honor.

9 THE COURT: I was speaking about your client who was  
10 going to remain in the room for Mr. Lee's testimony without  
11 any objection from Mr. Roberts. That's what we were  
12 discussing.

13 MS. BAE: Yes, Your Honor.

14 THE COURT: Great. Let's go with the witness.

15 (Brief pause.)

16 MR. ASHER: We're all set. Mr. Kang is now here,  
17 Your Honor.

18 MR. ROBERTS: May I ask if a declaration is going to  
19 be offered.

20 MS. BAE: There is no declaration.

21 MR. ASHER: There is no declaration.

22 MR. ROBERTS: Very well.

23 THE DEPUTY CLERK: Judge, would you like me to go  
24 ahead and place the witness under oath?

25 THE COURT: That would be great. Thank you so much.

1 MR. ASHER: Thank you very much.

2 (Whereupon, the witness was thereupon duly sworn.)

3 BOO HYUN KANG,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Asher:

7 BY MR. ASHER:

8 Q. Mr. Kang, please give your full name and your residence  
9 address.

10 A. My name is Boo Hyun Kang, and my address is 423 Old  
11 Tappan Road, Old Tappan, New Jersey.

12 Q. State your place of business at present.

13 A. Do you want the address?

14 Q. Yes. Well, give us the full name and your business and  
15 your relationship to it and the address of the business.

16 A. My business name is Soartech Inc., and the address is --

17 THE INTERPRETER: I'm sorry. Could you please say  
18 the address one more time?

19 A. (Continuing.) It is 23 [sic] Paris Avenue, Suite  
20 No. 102.

21 THE INTERPRETER: I'm sorry?

22 A. (Continuing.) Rockleigh. Rockleigh, New Jersey.

23 BY MR. ASHER:

24 Q. Are you the owner of the business?

25 A. Yes.

1 Q. Are you the president today?

2 A. Yes.

3 Q. When did you form the business?

4 A. January of 2008.

5 Q. Have you conducted that business from 2008 until the  
6 present day?

7 A. Yes.

8 Q. Before you formed your company, what was your job before  
9 that, or business?

10 A. I worked at Airtech from September of 2006 to December of  
11 2007.

12 Q. What was your position at Airtech?

13 A. I was the vice president.

14 Q. What is the nature of the business in general terms at  
15 Airtech during the period when you worked there?

16 A. We supply parts that our customers inquiry needed, and we  
17 supply those parts as a dealer.

18 Q. What is the nature of the business that Soar [sic] has  
19 conducted from 2008 until the present?

20 A. We are in similar business with Airtech, and we do the  
21 same thing.

22 Q. Same customer market?

23 A. We are in the same defense industry, but our main  
24 customers are different.

25 Q. When you left Airtech, did you take any customers with

1 you?

2 A. No.

3 Q. Did you work with Roy Yim when you worked at Airtech?

4 A. Yes.

5 Q. You had a -- you enjoyed a good relationship with him  
6 during the period when you worked together and then as well  
7 all the way up until 2021?

8 A. I think so.

9 Q. Have you had any contact with him after that point in  
10 time in 2021 when -- you know, the last time that you  
11 communicated with him?

12 A. Yes. I remember it to be October of 2022 after he left  
13 the company. We had supper at my house.

14 Q. What occurred, briefly, when he visited?

15 MR. ROBERTS: I'm going to object that he's  
16 attempting to elicit a hearsay response. Unless he's going to  
17 get a basis for it, I just want to get out in front of it.

18 THE COURT: Let's get a basis.

19 MR. ASHER: Well, I'm referring to the year 2021.  
20 And, number one and number two, I just simply wanted to ask in  
21 the most general terms what the defendant -- who was there  
22 when he visited Mr. Kang's home.

23 THE COURT: Are you going to elicit what the  
24 defendant -- one of the two defendants said to the witness?

25 MR. ASHER: Yes. But just for a very brief

1 encounter.

2 THE COURT: If you're going to elicit -- I can't  
3 imagine Mr. Roberts will object to that. It's a statement of  
4 a party opponent. If you're to elicit what one of the  
5 defendants said, I can't imagine there will be an objection,  
6 but why don't you elicit that and we'll see what happens.

7 BY MR. ASHER:

8 Q. In general terms, what were the subject matter of the  
9 discussions among the three of you at that time in 2021?

10 A. I'd like to confirm that you are asking about the time  
11 that we had supper at my house.

12 Q. Yes.

13 A. We just had general conversations. And since he had left  
14 the company, we talked about whether he had any plans as to  
15 what he was going to do next.

16 Q. Now, from that point in time up to the present, are you  
17 familiar with the business of Airtech?

18 A. I cannot understand your question precisely.

19 Q. Does your current business actually conduct business with  
20 Airtech?

21 A. No.

22 Q. Are you familiar with the nature of Airtech's business at  
23 present?

24 A. Yes.

25 Q. You believe it's the same or similar in terms of its

1 business with your own?

2 A. Yes, I to.

3 Q. What is the nature of your business at present?

4 MR. ROBERTS: Objection, objection.

5 THE COURT: I'll allow it. He can answer.

6 MR. ROBERTS: Thank you.

7 A. We supply parts that our customers in the defense  
8 industry of Korea need by sourcing it in the United States.

9 BY MR. ASHER:

10 Q. Is the business of Airtech a broker or is it some form of  
11 business?

12 MR. ROBERTS: Objection.

13 THE COURT: Sustained.

14 Don't answer it.

15 Mr. Asher, this person does not work at Airtech.

16 BY MR. ASHER:

17 Q. What is the nature of the business that you have at  
18 present?

19 MR. ROBERTS: Objection.

20 THE COURT: I'll allow it. I'll allow it.

21 Answer, please.

22 A. As I mentioned earlier, we supply parts that may exist as  
23 standard products, but also we supply parts that -- parts or  
24 products that exist as standard or sometimes not as a  
25 standard. And we find it and customize it and search for

1 those areas that's customizable, develop those products, and  
2 then supply to our customers.

3 So our customers call us partners, and our business is  
4 called to be in dealership relationship. That's how our  
5 customers call us.

6 Q. Are there different parts of the business in terms of  
7 customized products and standard products?

8 MR. ROBERTS: Objection.

9 THE COURT: Sustained.

10 Mr. Asher, this is highly limited utility under 401.  
11 This is another company. Move on, unless you have a very  
12 strong reason as to why this is relevant here.

13 BY MR. ASHER:

14 Q. When you left Airtech, did you obtain software for use in  
15 your new company?

16 MR. ROBERTS: Objection.

17 THE COURT: Overruled.

18 Answer, please.

19 A. Yes, I obtained the software that was used at Airtech,  
20 not the content of it, just the program. I got the program  
21 and took it with me.

22 BY MR. ASHER:

23 Q. Did you request Mr. Jin Lee, the president of Airtech, to  
24 provide the software for that purpose?

25 MR. ROBERTS: Objection.

1 THE COURT: Overruled.

2 Answer, please.

3 A. Yes. It is impossible to do business without the data so  
4 I requested to Mr. Lee and he allowed it.

5 BY MR. ASHER:

6 Q. But you didn't have any customer-related information that  
7 you took with you; is that right?

8 A. That is correct.

9 Q. The software at your company was then used for the  
10 conduct of your business at Soar; is that right?

11 A. Yes, that's right.

12 Q. You have noted that the use of the software and the data  
13 put in it was essential to the conduct of your business;  
14 correct?

15 A. Yes, that's correct.

16 Q. Do you maintain that data in the -- at your computers  
17 over a period of time?

18 MR. ROBERTS: Your Honor, I'm just going to note my  
19 objection to the relevance of this particular person's  
20 business operations as it concerns the specific subject matter  
21 of the return date of this application.

22 THE COURT: Mr. Asher, why are we talking about this?

23 MR. ASHER: To show the importance and utility of the  
24 maintenance of data on customer transactions and vendor  
25 transactions over a significant period of time.

1 THE COURT: He works for a different company.

2 MR. ASHER: It's part of a practice in an industry, I  
3 think. We have -- for review, we have Airtech, we also  
4 have Mr. Yim's business for the purpose of evaluating --

5 THE COURT: I'll sustain the objection. It's of  
6 marginal relevance under 401. It is confusing under 403.

7 You're asking that the Court make an inference about  
8 the practice of an industry when you have the industry  
9 participant that matters directly as your prior witness and  
10 indeed you had Mr. Yim through cross yesterday.

11 I'm not going to allow any more of this line of  
12 inquiry.

13 MR. ASHER: Thank you, Your Honor. Let me just have  
14 one minute with Ms. Bae.

15 THE COURT: Of course.

16 (Brief pause.)

17 MR. ASHER: We have no further questions for  
18 Mr. Kang.

19 MR. ROBERTS: I have no cross-examination.

20 THE COURT: Thanks. The witness is excused.

21 (Witness excused.)

22 THE COURT: Next witness.

23 MR. ROBERTS: Your Honor, may I make inquiry as to  
24 how many more witnesses we expect since we would also like to  
25 put a brief case on.

1 THE COURT: Mr. Asher, what are we looking at?

2 MS. BAE: We expect to have three more witnesses, and  
3 two of them are very short, Your Honor.

4 THE COURT: Okay. Very short would be great. That's  
5 a lot of witnesses. Let's just also have confirmation that  
6 the witness who just was on the stand has left the room  
7 because I think he should have.

8 MS. BAE: Yes, he did.

9 THE COURT: Great. Is this one of the very short  
10 witnesses or is this not?

11 MS. BAE: This is a short one.

12 THE COURT: Great.

13 I'll ask the Courtroom Deputy to please swear the  
14 witness in. And the witness can let us know -- or rather the  
15 attorneys, Mr. Asher and Ms. Bae, can let us know if this  
16 witness requires or does not require an interpreter.

17 (Brief pause.)

18 MS. BAE: She'll try her best. And if she has some  
19 problems, then we will chime in with Ms. Interpreter.

20 MR. ROBERTS: May I inquire if there's a declaration?  
21 Is there a declaration?

22 MR. ASHER: Yes.

23 MR. ROBERTS: There is. Okay. Good. So --

24 MR. ASHER: It is Plaintiff's Exhibit 28.

25 MR. ROBERTS: Okay.

1 THE COURT: Mr. Asher, let's just do this: The last  
2 thing you will do with this witness will be to offer this  
3 declaration?

4 MS. BAE: Yes.

5 THE COURT: Great. Okay. We'll ask the Courtroom  
6 Deputy to please swear in the witness, who has indicated  
7 through counsel that she does not need an interpreter.

8 (Whereupon, the witness was thereupon duly sworn.)

9 THE COURT: The witness did not respond to the oath.

10 THE WITNESS: Yes.

11 THE COURT: The answer is "yes." Just speak up a  
12 little bit because you didn't speak into the microphone.

13 Thank you very much.

14 MR. ASHER: We're moving that over, Judge.

15 THE COURT: Terrific. Thank you all.

16 SEO YOON,

17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Asher:

20 Q. Would you please for the record give your full name and  
21 residence address.

22 A. My name is Seo Yoon. My address is 213A 7th Street,  
23 Fairview, New Jersey, 07022.

24 Q. Do you work with Airtech today?

25 A. Yes, I am.

1 Q. How long have you worked at Airtech?

2 A. I started to work at 2015.

3 Q. All the way up until the present?

4 A. Yes, it is.

5 Q. What do you do at Airtech?

6 A. I'm the sales and purchasing agent.

7 Q. And from the time when you joined up until the time when  
8 Roy Yim left in September 2021, did you regularly communicate  
9 with him?

10 A. Yes, I was.

11 Q. What was the nature of the relationship that you had  
12 during that period of time?

13 A. I usually handles various account. If I need help or if  
14 I need approval from him, a supervisor, I will get confirm.

15 Q. What was the nature of the Airtech business that you  
16 conducted? Was it standard product or was it customized  
17 product or both?

18 A. To me, mostly standard product.

19 Q. What were the things or steps that you took in order to  
20 address inquiries coming from Korean customers?

21 A. If I receive an e-mail from a specifically request  
22 inquiry, I put it in the system on inquiry. So I put the list  
23 of the parts, and then I'll request quote to the vendor. And  
24 if I receive the quote from the vendor, I made a -- submitted  
25 the proposal to the customer.

1 Q. In the system that you just referred to, that's the  
2 system that you could refer to at Airtech itself; is that  
3 right?

4 A. Yes, it is.

5 Q. What was contained in the system?

6  
7 **Redacted**

8 **Redacted** So we have everything.

9 Q. Do you actually refer to it in order to conduct business  
10 with vendors and customers? Do you actually refer to that  
11 data?

12 A. Yes. Yes, I --

13 Q. Is it important or not?

14 A. It's very -- significantly important.

15 Q. And when Mr. Yim worked with you --

16 THE COURT: Mr. Asher, before you move on, would you  
17 mind asking the witness, just for my sake, about why it's  
18 important and what use she makes of that data in conveying  
19 prices to possible customers.

20 THE WITNESS: Since my part is mostly standard, you  
21 can find it everywhere. We have all the data that the vendor  
22 who has a cheaper price, so we can just save the -- not only  
23 save the time, we can just see the -- like some prices in the  
24 area. So we can just pick the vendor within minutes, not  
25 through search everything on website.

1 THE COURT: Well, maybe, Mr. Asher, you could ask  
2 what -- the price history from a particular customer, what  
3 role that plays.

4 I don't want to put any questions to the witness,  
5 Mr. Asher, unless you agree that that's okay. You can ask the  
6 questions or I will or we can just not have them asked. It's  
7 your witness.

8 MR. ASHER: It's certainly okay. Thank you very much  
9 for that.

10 Answer the Judge's question -- the particular question.

11 THE WITNESS: Can you pardon me? I missed the  
12 question. Sorry.

13 THE COURT: You bet.

14 With Mr. Asher's permission, I'll ask it.

15 Mr. Asher, is that okay?

16 MR. ASHER: Surely.

17 THE COURT: Okay. So you receive a request for a  
18 quote; is that right?

19 THE WITNESS: Right.

20 THE COURT: Then you check prices through the  
21 internet or through the database; is that right?

22 THE WITNESS: Yes. Mostly database.

23 THE COURT: Do you also check the database to see  
24 things about the price that the prospective customer has paid  
25 in the past?

1 THE WITNESS: Yes, of course.

2 THE COURT: Why do you do that?

3 THE WITNESS: It is because if I got the price from  
4 the vendor expensive, then the history -- the customer, the  
5 price is lower prices. So I can compare right after. So like  
6 basically I -- like last year I gave my customer like \$5  
7 offer, but if the vendor gives a current price of \$6, I have  
8 to research the other vendors or I can compromise to the  
9 vendor that I already have the price for the certain amount  
10 for last year. So that database for the history of customer  
11 price is very important.

12 THE COURT: Okay. So the price you charge a customer  
13 depends in part on what the database says about the price that  
14 customers paid in the past; is that right?

15 THE WITNESS: Yes. Yes, it is.

16 THE COURT: Mr. Asher, are you going to get to the  
17 continued relevance or not of price history that's a couple  
18 years old?

19 MR. ASHER: Yes.

20 THE COURT: Okay. Thank you.

21 BY MR. ASHER:

22 Q. In terms of duration of the data for -- with respect to  
23 your military and aerospace customers in Korea, what was the  
24 duration going back in times to conduct research in terms of  
25 what was shown in the system?

1 A. Since my parts usually the standard, I usually use the

2  
3 **Redacted**

4 Q. But in addition, in addition, do you have a record in  
5 terms of what the Korean customers themselves had made  
6 inquiries, request for quote and so forth with respect to the  
7 same or similar products?

8 A. I'm sorry. Can you repeat the question?

9 Q. You mentioned that there's a **Redacted**  
10 correct?

11 A. Uh-huh.

12 Q. But is there other -- is there a longer period of looking  
13 at data...I withdraw my question. I'll just ask it  
14 specifically.

15 On the duration issue which you just addressed, is the  
16 time period also true for a customer called **Redacted**  
17 **Redacted**

18 A. That's the actually project that I just remind of. This  
19 project is really long term. If it's standard parts, the  
20 project started back in like -- **Redacted**

21 **Redacted**

22 After that they have lots of different manufacture of  
23 equal balance parts, so the system makes me choose the part's  
24 number and choose the pricing of it. So I probably need to  
25 check the **Redacted**

1 Q. Let me turn to a declaration that you previously have  
2 given in this case.

3 THE COURT: Mr. Asher, this is the end of this  
4 witness's proposed direct examination?

5 MR. ASHER: Yes, it would be.

6 THE COURT: Great. Let's go to the declaration,  
7 then.

8 MR. ASHER: Your Honor, I just want to introduce --

9 THE COURT: Let's just put it on the screen, see if  
10 Mr. Roberts does or does not object, and we'll then take it  
11 from there.

12 (Brief pause.)

13 MR. ROBERTS: Are there any exhibits?

14 MR. ASHER: No exhibits.

15 MR. ROBERTS: No objection.

16 THE COURT: No objection, Plaintiff's Exhibit 28, the  
17 declaration of this witness, is received into evidence.

18 (Plaintiff's Exhibit No. 28 was received in  
19 evidence.)

20 THE COURT: Mr. Asher, that's the conclusion of your  
21 direct examination; correct?

22 MR. ASHER: That's correct.

23 THE COURT: Mr. Roberts or your colleagues, will  
24 there be cross?

25 MR. ROBERTS: No cross.

1 THE COURT: Thank you.

2 The witness, please step out of the room.

3 Next witness.

4 (Witness excused.)

5 (Brief pause.)

6 THE COURT: Does this witness require an interpreter?

7 THE WITNESS: Yes, I prefer.

8 THE COURT: I'll ask the Courtroom Deputy, please, to  
9 swear people in and then we'll get rolling.

10 (Whereupon, the witness was thereupon duly sworn.)

11 TOMMY KIM,

12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Asher:

15 BY MR. ASHER:

16 Q. Mr. Kim, please state your full name and residence  
17 address?

18 A. My name is Tommy Kim, 42nd East Central Boulevard,  
19 Palisades Park, New Jersey.

20 Q. Are you a sales representative --

21 A. Yes.

22 Q. -- at Airtech?

23 A. Yes.

24 Q. How long did you work at Airtech?

25 A. I been working at Airtech since 2015.

1 Q. Please briefly review your educational background.

2 A. I majored in computer science, mathematics. I majored in  
3 mathematics and computer science.

4 Q. When did you receive any degree?

5 A. I did not complete my degree.

6 Q. When did you last receive formal education in computer  
7 science?

8 A. I think it was approximately in 2002.

9 Q. Now, you worked from time to time with Roy Yim during the  
10 period of time when Mr. Yim served as the general manager of  
11 the company?

12 A. Yes, I did.

13 Q. I'd like to show you Exhibit 7. Showing you these  
14 pictures, did Mr. Yim take two of the computers from  
15 Airtech -- from Airtech's offices?

16 A. Yes, that's right.

17 Q. Are you able to identify which of those computers are  
18 shown in Mr. Yim's arms at the time those photographs were  
19 taken of him?

20 A. Yes, I can.

21 Q. Please identify them.

22 A. The first -- in the first photo the large desktop  
23 computer is showing. That is Mr. Yim's computer.

24 The second computer in the second photo looking like a  
25 slim tower type of computer is Mr. Lee's computer.

1 Q. After -- how come you know what you just testified?

2 A. I am in charge of managing computer inventories within  
3 the company.

4 Q. Did there come a point in time when it was reported that  
5 Mr. Lee was missing a computer he was looking for?

6 A. That's correct.

7 Q. At some point in time, the two computers in question were  
8 returned by Mr. Yim to Airtech; is that right?

9 A. That's right.

10 Q. When his computer was returned, did you examine the  
11 computer yourself?

12 A. Yes, I did.

13 Q. What did you notice from your own examination of the  
14 computer?

15 A. Mr. Yim's computer had only one hard drive. That one  
16 hard drive that was there was reformatted with new program.  
17 And I found out that the data file was in -- copied. Yes, he  
18 did.

19 MR. ASHER: May I have the answer read back.

20 THE INTERPRETER: May the Interpreter ask for  
21 clarification?

22 A. (Continuing.) So that hard drive was divided into  
23 two sections, and in one section system files were in and the  
24 other half had data files in.

25 ///

1 BY MR. ASHER:

2 Q. Did you note that a drive was missing?

3 A. Yes, I did.

4 Q. Now, before the computer was received, did you contact  
5 Roy Yim after he left Airtech's employment and requested him  
6 to inform you where his computer was located?

7 A. Yes, I did.

8 Q. What was Mr. Yim's response to your request?

9 A. At the time of the conversation, he told me that he had  
10 thrown out Mr. Lee's computer.

11 Q. I understand. The purpose of your call to him was to  
12 locate Mr. Lee's computer; isn't that right?

13 A. Yes. Mr. Lee was looking for a file and that file was  
14 stored in Mr. Lee's computer, so he asked me to bring  
15 Mr. Lee's computer, but I could not find in the storage that I  
16 stored the computer, so I called Roy and asked him where  
17 it was.

18 Q. And his response was that he had thrown out Mr. Lee's  
19 computer?

20 A. Yes. He clearly told me that he had thrown out Mr. Lee's  
21 computer, so told me to reapply that file.

22 Q. What was Mr. Lee or you looking for within his computer?

23 A. It was a file related to certification, and you need that  
24 file to be able to connect to public -- country's public  
25 website -- certain country's public websites.

1 Q. Right. Now, what happened then?

2 A. At that time since we did not have that particular file,  
3 we reapplied for the file and received newly issued file. But  
4 afterwards we talked about it, and then one of our company  
5 employee said that he or she saw Roy taking out the computer,  
6 and we viewed the CCTV video footage and then confirmed it.

7 Q. And after that point in time request was made of him,  
8 based on the CCTV, requesting him to return the two computers?

9 A. I don't know exactly because I'm not the one who  
10 requested it.

11 Q. Is it your understanding that the computers were returned  
12 following your telephone calls with him?

13 A. Yes, it is.

14 Q. You've already testified that after the computer was  
15 returned you conducted an inspection of it; right?

16 A. Yes.

17 MR. ASHER: What I'd like to do is show to the  
18 witness  
19 four screenshots from files or folders in the computer. They  
20 are Exhibits -- Plaintiff Exhibits 132, 133, 134, 135. I'd  
21 like to have those --

22 THE COURT: Are you going to offer them?

23 MR. ASHER: I am going to offer all four of them into  
24 evidence.

25 THE COURT: Let's get Mr. Roberts' position after

1 they're up on the screen.

2 MR. ASHER: Right. Okay. Let me tell you I'm just  
3 going to repeat the numbers again for Mr. Roberts' reference.  
4 It's 132, 133, 134, and 135.

5 This is starting with 132. The first would start at  
6 132. Looking at 132 -- is that 132? It was originally marked  
7 at a prior deposition.

8 BY MR. ASHER:

9 Q. Showing at the top of the document -- now, on this  
10 particular screenshot, did you identify that and arrange for a  
11 screenshot of that segment of Roy Yim's computer?

12 A. Yes, that's right.

13 THE COURT: Mr. Asher, are you offering this  
14 document?

15 MR. ASHER: I am. Yes, I am.

16 THE COURT: It's marked J1 or 51, Plaintiff's  
17 Exhibit 51 or J1. Underneath it "7/8/22" and then two  
18 letters.

19 Mr. Roberts, you're position.

20 MR. ROBERTS: In this instance --

21 THE COURT: I didn't hear what Mr. Roberts' position  
22 might be.

23 Mr. Roberts, you're on mute.

24 MR. ROBERTS: I apologize. May I have a proffer?  
25 I'd just like to know for what purpose it's offered first.

1 MR. ASHER: Yes, I will, to the witness.

2 BY MR. ASHER:

3 Q. Does this screenshot show whether any part of the data --

4 THE COURT: No, no, no. Mr. Asher, Mr. Asher, say to  
5 Mr. Roberts why you want this evidence in. It's not through  
6 the witness. Just give us -- give him a proffer and let's  
7 make it quick.

8 MR. ASHER: I want to establish from this document as  
9 well as the other screenshots that as to the data reflected on  
10 each of these screenshots the -- certain files and folders as  
11 shown in the screenshot were copied on October 18, 2021.

12 THE COURT: What's the relevance of that?

13 MR. ASHER: Mr. Yim claims that no documents were  
14 copied, and the copy references shown at the top of this  
15 exhibit show, according to this witness, it was copied.

16 THE COURT: Okay. Mr. Roberts, that's the proffer.  
17 What's your position on this exhibit?

18 MR. ROBERTS: Unless I misunderstand the testimony in  
19 the exhibit, this is a screenshot, does not purport to show  
20 that anything was copied. It purports to show an inventory at  
21 a particular -- unless I'm mistaken, I don't think it's dated.  
22 There's date modified, but the screenshot itself we have no  
23 idea when it was taken.

24 THE COURT: Mr. Roberts, any further objection?

25 MR. ROBERTS: Yeah. It doesn't -- it's not -- the

1 evidence for how it's being offered does not comport with the  
2 proffer.

3 THE COURT: The objection is overruled. The  
4 testimony was that this witness made this screenshot. If this  
5 shows that there is copying, that is potentially of interest.  
6 If it shows that there's no copying, then there's every reason  
7 to think that this is an irrelevant piece of evidence and  
8 Mr. Roberts at the close of the proceedings can conceivably  
9 move, if relevant to him, to strike this to the record.

10 Mr. Asher, continue please. This is in.

11 (Plaintiff's Exhibit No. 132 was received in  
12 evidence.)

13 THE COURT: You had some other materials?

14 MR. ASHER: The next three represent, I think, the  
15 same -- from different folders in the same computer, subject  
16 to the same proffer at Plaintiff's 133, 134, and 135.

17 THE COURT: Mr. Asher, before we get to the proffer,  
18 you've got to ask the witness whether with respect to each of  
19 these documents he made the screenshot off of the computer.  
20 If you do that, we can get Mr. Roberts' position and he may  
21 again want a proffer.

22 MR. ASHER: Right. I understand. The first one is  
23 133 -- Plaintiff 133. Is this 133?

24 (Brief pause.)

25 ///

1 BY MR. ASHER:

2 Q. Mr. Kim, looking at Plaintiff's 133, does it show at the  
3 top --

4 MR. ASHER: Please go to 133. What's wrong with 133?  
5 (Brief pause.)

6 BY MR. ASHER:

7 Q. At this point, Mr. Kim, we're showing you Plaintiff's 134  
8 for identification.

9 Do you recognize that document?

10 A. Yes.

11 THE COURT: What is it?

12 Sir, what is on the screen is marked Plaintiff's  
13 Exhibit 52?

14 MR. ASHER: Yes. It's now -- we have changed over to  
15 another one of these exhibits. The one that's now on the  
16 screen is Plaintiff's Exhibit 53 from a deposition in this  
17 case and now --

18 THE COURT: The record needs to be crystal clear,  
19 Mr. Asher. What is currently on the screen is marked with a  
20 yellow sticker labeled Plaintiff's Exhibit 52. Below it is a  
21 date of 7/8/22 and next to that are two initials, A and N. If  
22 you want to question the witness about this document, let's  
23 refer to it as Plaintiff's Exhibit 52.

24 MR. ASHER: Okay. Let's turn back to 132, please.

25 THE COURT: Why don't we try and see what sticker is

1 on this document. What this document is is Plaintiff's  
2 Exhibit 51, which was offered into evidence and admitted into  
3 evidence about five minutes ago.

4 MR. ASHER: We have in front of the witness,  
5 Your Honor, Plaintiff's 132. It was previously marked 51 in a  
6 prior deposition in this case.

7 THE COURT: Right. But Plaintiff's Exhibit 51,  
8 unless I'm getting this wrong, was admitted into evidence  
9 five minutes ago.

10 MR. ASHER: That's correct.

11 THE COURT: I thought you said you wanted to offer  
12 three other documents.

13 MR. ASHER: That's correct. That's what I wanted to  
14 do. I just wanted to go back and have the witness himself --  
15 we didn't get to the proffer on 132. I just wanted to ask him  
16 if what's represented in Plaintiff 132 in evidence --

17 THE COURT: But we don't have 132 in front of us,  
18 Mr. Asher.

19 MR. ASHER: We now do.

20 THE COURT: No. This is Plaintiff's Exhibit 51.

21 MR. ASHER: No, no. It's one in the same. It was  
22 marked for identification in a deposition two years ago.

23 THE COURT: Okay. So Plaintiff's Exhibit 51 dated  
24 7/8/22, which is not marked, is Plaintiff's Exhibit 132, which  
25 was admitted into evidence. Okay. Let's keep going.

1 MR. ASHER: Now I'm just asking the witness what does  
2 he find with respect to the first two line items in that  
3 screenshot.

4 THE WITNESS: The first two lines show the  
5 modification date as October 18, 2021, so it tells me that  
6 something was copied that day.

7 MR. ASHER: Thank you very much.

8 BY MR. ASHER:

9 Q. Let me ask you to look at Plaintiff's Exhibit 133 for  
10 identification.

11 THE COURT: Mr. Asher, please refer to the exhibits  
12 by the yellow sticker number on the document. We're trying to  
13 keep the record clear.

14 MR. ASHER: Thank you very much, Your Honor.  
15 Plaintiff's 133 at this point for identification, previously  
16 marked as Plaintiff's 52 at a deposition in July 2022.

17 So at this point I would ask Mr. Kim to look at this  
18 document and ask whether anything appeared to have modified to  
19 this data --

20 THE COURT: Mr. Asher, hang on. Is this document in  
21 evidence, the one that is Plaintiff's Exhibit 52 and  
22 Plaintiff's Exhibit 133? I believe the answer is no.

23 MR. ASHER: 132 I believe is in evidence. We're now  
24 at 133.

25 THE COURT: Right. But you can't ask him to testify

1 about a document that is not in evidence.

2 MR. ASHER: Okay. Then in this case of 133 I would  
3 request that this be received into evidence at this time.

4 THE COURT: Did you lay a foundation about the  
5 witness having copied this from the relevant computer? That  
6 foundation would seem to apply to the next three documents.  
7 Let's try and move this along.

8 MR. ASHER: I can do that. I think I can achieve  
9 that, too.

10 BY MR. ASHER:

11 Q. Let me ask, Mr. Kim, if you -- when accessing this  
12 computer you had obtained from your review -- 132 as well as  
13 133, did you obtain it as you were locating through the  
14 computer?

15 THE INTERPRETER: Mr. Counselor, I apologize. Could  
16 you please repeat your question?

17 THE COURT: Mr. Asher, Mr. Asher.

18 MR. ASHER: Yes.

19 THE COURT: Show him all of the documents you would  
20 like him -- without -- just put in front of him all of the  
21 documents you would like to offer today through him and ask  
22 him what, I think, is your basis, which is did he go into the  
23 computer and did he make screenshots and are these those  
24 screenshots.

25 That's the information we're all looking for, I think.

1 (Brief pause.)

2 MR. ASHER: 132.

3 THE COURT: 132 is in evidence. We are focused on  
4 what is not in evidence.

5 (Brief pause.)

6 BY MR. ASHER:

7 Q. Let's go back to review them before I ask you a question.

8 Just take a look at 132, previously marked in a prior  
9 deposition as Plaintiff's 51. Now, in Plaintiff 52 -- now  
10 move to Plaintiff's 133, previously Marked Plaintiff's 52.  
11 Now please look at Plaintiff's 134 for identification,  
12 previously marked as Plaintiff's Exhibit 52 -- 53 at a prior  
13 deposition. And, finally, please look at Plaintiff's 135 for  
14 identification, previously marked at a prior deposition as  
15 Plaintiff's 54.

16 Make sure that you had a chance to take a look at each  
17 of these four items. Okay?

18 MR. ASHER: I am requesting to have all of them  
19 received into evidence. I believe 132 is already received  
20 into evidence. Now I'm asking that 133, 134, and 135 would be  
21 received into evidence.

22 BY MR. ASHER:

23 Q. Before I make the formal request, I ask whether you are  
24 familiar with these four documents?

25 A. Yes, I am.

1 Q. Were you responsible for collecting -- first accessing,  
2 identifying, and collecting information with respect to each  
3 of these --

4 THE COURT: Mr. Asher, Mr. Asher, Mr. Asher. This is  
5 really not clear. I would suggest you put the following  
6 question to the witness:

7 "Plaintiff's Exhibit 133, 134, and 135, what are these  
8 documents?"

9 Let us move forward.

10 MR. ASHER: Right. Yes, Your Honor. I'm just  
11 going to adopt that.

12 BY MR. ASHER:

13 Q. What are these pages?

14 A. These are the screenshots of the computer that Roy had  
15 returned.

16 Q. You were responsible for identifying and collecting; is  
17 that right?

18 A. Yes, I am.

19 Q. What do they represent?

20 A. It shows that the C drive was reinstalled on  
21 October 24th. The orders on E drive was all copied and  
22 reinstalled on October 18.

23 MR. ASHER: Can I hear from the Court Reporter the  
24 answer?

25 THE COURT: Mr. Asher, before we engage in this,

1 Exhibits 133, 134, and 135 have not been offered into  
2 evidence. You are asking a witness to testify about materials  
3 that are not in evidence.

4 MR. ASHER: Yes. I believe he has provided a  
5 foundation with respect to them and he -- so what I'm offering  
6 into evidence, you know, Plaintiff's 132, 133, 134, and 135,  
7 previously marked --

8 THE COURT: Mr. Asher, we're fine. 132 is already in  
9 evidence.

10 Mr. Roberts, your position on Plaintiff's Exhibits 133,  
11 134, and 135?

12 MR. ROBERTS: I do not -- I object. I do not believe  
13 an appropriate foundation has been established for the purpose  
14 for which they're being offered. I don't know if foundation  
15 has been established, quite frankly, at all.

16 THE COURT: Mr. Asher, this is an unbelievably  
17 confused record for reasons I don't understand. For  
18 Plaintiff's Exhibit 133, 134, and 135 the witness either can  
19 testify simply and clearly that these are screenshots from his  
20 own work in the computer or he cannot, but at this point that  
21 is highly muddled.

22 So for now I'm denying the motion to admit these  
23 materials subject to you now laying a simple and adequate  
24 foundation.

25 MR. ASHER: Let me make a further effort.

1 THE COURT: My perception is that we are having some  
2 difficulties in part because there is difficulty -- Mr. Asher,  
3 please focus here. Mr. Asher, I'm speaking to you.

4 Mr. Asher.

5 MR. ASHER: Yes.

6 THE COURT: My perception is that we are having  
7 difficulties in part because -- Mr. Asher, focus here, please.

8 We are having difficulties in part because of the  
9 difficulties of putting materials on the screen. We are gonna  
10 take a five-minute recess. We're going to get back on at  
11 2:21, at the end of which you will have shown the witness  
12 these materials so we can move quickly through the record.  
13 And then Mr. Roberts can make objections he may want to and I  
14 will rule. We will get back on at 2:21. Thank you.

15 (Recess taken.)

16 THE COURT: Let's get going.

17 MR. ASHER: Where is 132? We don't have any. Where  
18 is 132.

19 Well, the physical copies of 132 are being collected --

20 THE COURT: Mr. Asher, 132 is in evidence. Let's  
21 focus on 133 and 134 and 135.

22 BY MR. ASHER:

23 Q. With regard to 133, 134, and 135, they are right in front  
24 of you.

25 Who made the screenshots in question?

1 THE COURT: Ms. Interpreter, you need to translate  
2 what he has said.

3 THE INTERPRETER: I couldn't hear him, so I asked him  
4 to repeat his answer.

5 THE COURT: Thank you.

6 A. I took these screenshots.

7 MR. ROBERTS: I'm going to withdraw my objection.  
8 I'd like to call my witnesses today. I'm going to withdraw my  
9 objection.

10 THE COURT: All right. Plaintiff's Exhibit 133, 134,  
11 and 135 are in evidence without objection. Let's move on,  
12 Mr. Asher.

13 MR. ASHER: All right.

14 (Plaintiff's Exhibit Nos. 133, 134, 135 were  
15 received in evidence.)

16 BY MR. ASHER:

17 Q. In conclusion, in each of these four screenshots, it  
18 shows that a copy or modification occurred with regard to the  
19 data shown in each of these folders --

20 MR. ROBERTS: Objection to form.

21 Q. -- on --

22 THE COURT: Sustained.

23 Don't answer it.

24 Sustained, sustained.

25 ///

1 BY MR. ASHER:

2 Q. What modification, if at all, was conducted as shown in  
3 these three -- in these four screenshots?

4 A. On the C drive all the folders were modified on  
5 October 24th. On E drive all the five folders were modified  
6 as of October 18.

7 Q. And you received the computer in December from Mr. Yim;  
8 correct?

9 A. That's correct.

10 MR. ASHER: Thank you very much. No further  
11 questions.

12 THE COURT: Okay. Mr. Roberts, any cross?

13 MR. ROBERTS: Yes, very little, Your Honor. Thank  
14 you.

15 MS. BAE: One thing, Your Honor.

16 MR. ASHER: The declaration of Mr. Kim --

17 MR. ROBERTS: No objection. Are there exhibits?

18 MS. BAE: Yes -- no exhibits.

19 MR. ROBERTS: No objection.

20 THE COURT: The declaration of Mr. Kim is in  
21 evidence.

22 Mr. Asher, what plaintiff's exhibit number does it  
23 bear?

24 MR. ASHER: None.

25 MS. BAE: It's Exhibit 168, Your Honor.

1 THE COURT: Plaintiff's Exhibit 168 is in evidence.

2 (Plaintiff's Exhibit No. 168 was received in  
3 evidence.)

4 THE COURT: Mr. Asher, please read into the record  
5 the date above the signature on the final page of the  
6 declaration.

7 MR. ASHER: Yes. It's showing June 7, 2022.

8 THE COURT: The June 7, 2022, declaration of Tommy  
9 Kim, Plaintiff's 168, is in evidence.

10 Mr. Roberts, you can begin your cross.

11 MR. ROBERTS: Thank you.

12 Mr. Kamvosoulis, can I please have 132, 133, 134, and  
13 135 re-displayed.

14 CROSS-EXAMINATION

15 By Mr. Roberts:

16 Q. Good afternoon, Mr. Kim. My name is Keith Roberts and I  
17 represent the defendants in the action. I have a few  
18 questions. I'll be brief.

19 This is the first page that you testified about, a  
20 screenshot that you created. Am I correct?

21 A. Correct.

22 Q. Please tell me the date you created it.

23 A. I don't recall the exact date but perhaps December --  
24 mid-December, but I do not recall the exact date.

25 Q. Now, in looking at the first page, which is PX-132, the

1 screenshot itself does not tell us that any data was copied.

2 Am I correct?

3 A. Correct.

4 MR. ROBERTS: Next screen, please.

5 (Brief pause.)

6 MR. ROBERTS: Am I looking at PX-133 for the record,  
7 please? I can't tell from my vantage point.

8 MR. KAMVOSOULIS: Hold on, Keith. Yes, you are.

9 MR. ROBERTS: Thank you.

10 BY MR. ROBERTS:

11 Q. I have the same questions, sir, about this screen. This  
12 particular screenshot does not tell us that any particular  
13 data was copied. Am I correct?

14 A. That's correct.

15 MR. ROBERTS: May I please have the view of 134.

16 (Brief pause.)

17 MR. ROBERTS: Do I have the vantage point of 134?

18 MR. KAMVOSOULIS: You do.

19 MR. ROBERTS: Thank you.

20 BY MR. ROBERTS:

21 Q. Sir, same question: This screenshot does not tell us  
22 that any data from the drive has been copied. Am I correct?

23 A. That's correct.

24 MR. ROBERTS: May I please have the vantage point of  
25 135, please.

1 BY MR. ROBERTS:

2 Q. Sir, I have the same question --

3 MR. ROBERTS: Am I looking at 135, for the record?

4 MR. KAMVOSOULIS: Yes, you are, Keith.

5 BY MR. ROBERTS:

6 Q. Excuse me, sir. I have the same question.

7 Does this screenshot --

8 MR. ROBERTS: Are we looking at it in its entirety,  
9 for the record, please?

10 MR. KAMVOSOULIS: Yes.

11 MR. ROBERTS: Thank you.

12 BY MR. ROBERTS:

13 Q. Sir, I have the same question for PX-135. This  
14 screenshot does not tell us that any particular data on the  
15 drive was copied. Am I correct, sir?

16 A. Yes.

17 Q. Okay. Also, sir, when we were looking at 132, 133, 134,  
18 135, admitted into evidence in the record, we're talking about  
19 screenshots that you made from the computer previously  
20 utilized by Roy Yim while working at Airtech. Am I correct?

21 A. Could you please repeat the question?

22 THE INTERPRETER: Would you like me to just  
23 reinterpret the question, or would you like to repeat it?

24 MR. ROBERTS: No, no. I would ask the -- pardon me.  
25 I would ask the Court to have the Court Reporter kindly read

1 it back.

2 THE COURT: I'll ask the Court Reporter to read back  
3 the question.

4 (The requested portion is read back by the Official  
5 Court Reporter as follows:

6 Q. Okay. Also, sir, when we were looking at 132,  
7 133, 134, 135, admitted into evidence in the record, we're  
8 talking about screenshots that you made from the computer  
9 previously utilized by Roy Yim while working at Airtech. Am I  
10 correct?

11 A. It is not a screenshot of computer that was being  
12 utilized at the time of Roy's employment, but this was a  
13 screenshot of a computer that Roy had returned after he left  
14 the company.

15 BY MR. ROBERTS:

16 Q. Do you know whose computer -- withdrawn.

17 Do you know if this computer was assigned to Roy for  
18 use at Airtech or was it assigned to somebody else? Do you  
19 know?

20 A. I'd like to hear the question again.

21 MR. ROBERTS: Okay. I'll rephrase it.

22 BY MR. ROBERTS:

23 Q. Do you know who this computer was assigned to at Airtech  
24 for use previously?

25 A. Roy's computer was a computer that Roy purchased himself.

1 That is not the company assigned this particular computer to  
2 Roy because Roy purchased his own computer at Airtech to use.

3 Q. So the computer belonged to Roy. Am I correct?

4 A. This is the computer that Roy utilized while working at  
5 Airtech.

6 Q. Roy purchased the computer himself. Am I correct?

7 A. Roy did not purchase this computer with his own money but  
8 purchased with company money for his use at the company.

9 Q. Okay. Thank you.

10 Now, my last question is: You did not provide any  
11 testimony today that the computer that belonged to Mr. Lee was  
12 modified by Roy in any way. Am I correct?

13 A. That's correct.

14 MR. ROBERTS: I have no further questions.

15 MR. ASHER: I have one or two questions, Your Honor.

16 THE COURT: Very quick, Mr. Asher, very quick.

17 REDIRECT EXAMINATION

18 By Mr. Asher:

19 Q. With regard to each of these four exhibits, 132, 133,  
20 134, and 135, did you note that there was a modification to  
21 each of these computers bearing a date after the time when Roy  
22 left Airtech's employment?

23 A. Yes. Roy had taken the computers in June, and the  
24 modification dates were after that, and that shows me that he  
25 modified the computer before returning it.

1 MR. ASHER: Thank you. No further questions.

2 MR. ROBERTS: I have one follow-up to that.

3 THE COURT: Mr. Roberts.

4 MR. ROBERTS: One follow-up to that.

5 RECROSS-EXAMINATION

6 By Mr. Roberts:

7 Q. Sir, when you open up the file and you close the file,  
8 just a matter of opening the file and closing the file, not  
9 even making one change, is it true that the document or that  
10 file will then show that it's been modified? Is that correct,  
11 sir?

12 A. Not at all, no. That is incorrect.

13 Q. So, sir, if I open up a Word document on a computer and I  
14 view it and I close it, is the directory going to show that  
15 that document was modified? "Yes" or "no"?

16 A. No.

17 Q. You're certain of that response, sir? I just want to  
18 clarify. Are you certain of that, or is that your best guess?

19 A. To my knowledge, I'm certain.

20 Q. Okay. To your knowledge. Okay.

21 Finally, sir, on the modifications that are shown in  
22 the directory on the screenshots, do you know what  
23 modifications were made to any of those particular files?

24 A. Based on the fact that all the modification dates were  
25 the same, it seems to me that all the folders and files were

1 copied and pasted that day.

2 Q. That wasn't my question, sir. My question was -- if you  
3 could answer my question, please.

4 My question was, based upon the screenshots that you  
5 had taken which show modification, are you able to tell the  
6 Court how the documents were modified?

7 With certainty, sir, are you able to tell the Court how  
8 the documents were modified?

9 A. I could not state for certain which files were modified  
10 how, based on just these screenshots.

11 MR. ROBERTS: Thank you. I have no further  
12 questions.

13 MR. ASHER: No further questions, Your Honor.

14 THE COURT: Thank you very much. Next witness.  
15 Let's have that witness please step out of the room for  
16 whoever is next to testify.

17 (Witness excused.)

18 MS. BAE: We call Daniel Chun, Your Honor.

19 THE COURT: How long is this witness gonna take?

20 MS. BAE: Perhaps 15, 20 minutes, Your Honor.

21 THE COURT: Mr. Roberts, you alluded to wanting to  
22 put on a case.

23 How many witnesses do you have and how long are they  
24 going to take?

25 MR. ROBERTS: Mr. Kamvosoulis is going to present

1 two experts.

2 Tom, you estimate, I think, 40 minutes for one,  
3 30 minutes for one or the other or both? Would you elaborate  
4 for the Court, please.

5 MR. KAMVOSOULIS: Sure. I will do my best to  
6 truncate the witnesses, but, you know, at least 30 minutes for  
7 each on direct.

8 THE COURT: That's gonna take us past the time that  
9 we have allocated for today, so we'll deal with that as it  
10 comes.

11 Mr. Asher, let's be brisk.

12 MR. ASHER: I have a preparation for cross for the  
13 two of these -- the authors of about 30 minutes.

14 THE COURT: That's going to take us well past the  
15 30 minutes. Mr. Asher, will you now please ask the next  
16 witness, please.

17 (Brief pause.)

18 BY MR. ASHER:

19 Q. Mr. Chun, please identify your name and your residence  
20 address and your current place of business?

21 THE COURT: We don't need his address. Let's keep  
22 going. Before we do any of that, we need to have the witness  
23 sworn and we need to know if he needs an interpreter.

24 Let's begin with that, Mr. Asher. Let's dispense with  
25 home address. Not relevant.

1 Does this witness need an interpreter?

2 THE INTERPRETER: Yes, I need an interpreter.

3 THE COURT: I'll ask the Courtroom Deputy to please  
4 swear in the witness.

5 (Whereupon, the witness was thereupon duly sworn.)

6 JIN WOO CHUN,

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Asher:

10 BY MR. ASHER:

11 Q. Are you currently general manager of Airtech  
12 International?

13 THE INTERPRETER: Interpreter question: Is it  
14 Airtech or Hurtech?

15 MS. BAE: Airtech.

16 A. Yes, I am.

17 BY MR. ASHER:

18 Q. How long have you held that position?

19 A. Since September 2021. I became the general manager after  
20 Roy left.

21 Q. After Roy Yim left Airtech's employment, did you speak  
22 with any customers in Korea concerning Mr. Yim?

23 A. Yes.

24 Q. With whom did you speak? Give me their names.

25 A. I spoke with [Redacted] and [Redacted]

1 **Redacted**

2

3 MR. ROBERTS: Your Honor, to the extent that the

4 plaintiffs now intend to elicit, you know, inflammatory

5 hearsay from this witness about what he spoke to concerning

6 Roy's misdeeds or whatever the case may be with these

7 individuals overseas who they have not produced to testify in

8 this case, I'm going to object to it. It's quarter to 3:00 --

9 MR. ASHER: I did need --

10 THE COURT: Mr. Roberts and Mr. Asher -- Mr. Roberts,

11 I understand your position. Why don't you make objections as

12 questions are asked and I'll rule on them.

13 MR. ROBERTS: Yes, Your Honor.

14 THE COURT: Thank you.

15 MR. ASHER: The question I intended to make and I'm

16 also guided with the Court's concern about the --

17 THE COURT: Mr. Asher, ask questions, ask questions.

18 Just as Mr. Roberts could object to questions, you're going to

19 ask questions. We don't otherwise do anything. Thank you.

20 BY MR. ASHER:

21 Q. Did either of these Korean customers tell you that Roy

22 stated that he had all pricing information available to them?

23 MR. ROBERTS: Objection.

24 THE COURT: Don't answer the question.

25 Next question.

1 BY MR. ASHER:

2 Q. Now, have you reviewed documents which your lawyers have  
3 received from banks pursuant to subpoenas, documents showing  
4 funds that were received from customers for Mr. Yim?

5 A. Yes, I did.

6 Q. You also reviewed bank records which Mr. Yim's counsel  
7 had also produced?

8 A. Yes, I did.

9 Q. With regard to bank records you reviewed, as you  
10 indicated a minute ago, were there any results that you  
11 reached concerning the amount of money from customers that you  
12 identified in those records?

13 MR. ROBERTS: Objection, Your Honor. The best  
14 evidence would be the records. If he's going to elicit  
15 testimony concerning an area which is going to be accepted to  
16 the Court as to financial transaction that Mr. Yim may have  
17 done, I assume in violation of the order, the best evidence  
18 would be to actually confront the witness with the document,  
19 establish a foundation for its admission, rather than the  
20 witness, you know, provide us with some conclusion about some  
21 nebulous bank statement that he's seen.

22 THE COURT: Sustained.

23 Mr. Asher, if you want to put a document in front of a  
24 witness in evidence and ask him about it, you should do that.

25 ///

1 MR. ASHER: Let me turn to proposed Plaintiff 210.

2 THE COURT: It's not on the screen.

3 MS. BAE: We're putting it up, Your Honor.

4 THE COURT: Great. Thank you.

5 BY MR. ASHER:

6 Q. Mr. Chun, do you recognize this document and who  
7 prepared it?

8 A. I reviewed it, and I prepared it.

9 Q. What does it represent?

10 A. This document shows the transactions that was made from  
11 April of 2022 to August of 2023 by Hans Aerospace with 3 of  
12 Airtech's 11 customers; namely, Redacted and Redacted  
13 Redacted

14 Q. Turning to the last page of the document --

15 MR. ROBERTS: Objection. The document is not in  
16 evidence. The document is not going to pass an exception  
17 under --

18 THE COURT: Hang on, hang on, hang on. Mr. Roberts,  
19 nothing has happened.

20 MR. ROBERTS: Okay.

21 THE COURT: He just said turn to the last page of the  
22 document.

23 Finish the question, please.

24 BY MR. ASHER:

25 Q. Did you summarize the results set forth from your review

1 of the invoices? "Yes" or "no"?

2 A. Yes.

3 THE COURT: Mr. Asher, the last question is troubling  
4 in a way the record does not reflect. You are putting in  
5 front of the witness a document that is not in evidence; and  
6 while your question suggests you're asking him to testify,  
7 what it looks like, to me, as I watch you is like you're  
8 putting in front of him a document not in evidence and asking  
9 him to speak about it.

10 If you would like him to speak to a document, you've  
11 got to offer it and it's got to be in evidence.

12 MR. ASHER: I understand, Your Honor, but I simply  
13 asked that -- my final question is to say what he did with  
14 regard to it. And at this point, given what he has just  
15 testified and including my last question and his answer, on  
16 that basis I would offer it into evidence.

17 THE COURT: Mr. Roberts.

18 MR. ROBERTS: Thank you. I object. This is a  
19 summary of evidence. Okay. It is hearsay. It is not simply  
20 admissible because -- simply because he said he looked at  
21 evidence, which by the way hasn't been admitted, so we don't  
22 have a foundation for which the summary would be reliable for  
23 the Court to accept, number one. Under 801 it's not a  
24 business document.

25 This was created for the purposes of litigation. This

1 is a summary of his opinions based upon some documents that  
2 are not in evidence that he reviewed and thus now is offering  
3 that collective summary of evidence to the Court without  
4 meeting an exception to the hearsay rule for this particular  
5 document. It's not a business document, thus it doesn't get  
6 an exception based upon its reliability as created in the  
7 ordinary course of business.

8 This is essentially summary testimony that's just being  
9 pushed in which we have no way of verifying.

10 MR. ASHER: Your Honor, the significant point today  
11 is that --

12 THE COURT: Mr. Asher, hold on for one second,  
13 please.

14 Please go to the very top of this exhibit that we are  
15 looking at.

16 (Brief pause.)

17 THE COURT: The exhibit we're looking at is  
18 Plaintiff's Exhibit 210 for identification. The left-most  
19 column is labeled "document number," and that reflects a  
20 number of documents, all of which start with a Bates number  
21 beginning with YIM006818 and continuing from there.

22 Mr. Asher, are those documents in evidence?

23 MR. ASHER: No, but they were produced by --

24 THE COURT: Mr. Asher, hang on for a second.

25 MR. ASHER: And this was --

1 THE COURT: Mr. Asher, hang on for a second. What  
2 proffer can you offer as to when this document was created?  
3 Month and year.

4 MR. ASHER: This year.

5 THE COURT: And what proffer can you offer as to  
6 whether this document was created for litigation or otherwise?

7 MR. ASHER: I can't. But what's significant --

8 THE COURT: Mr. Asher, I'm asking you for your answer  
9 to my question.

10 MR. ASHER: I answered I can't offer it for a reason  
11 other than for --

12 THE COURT: No, no, no. I'm asking you if you can  
13 proffer to me, as I rule on your offer of evidence, whether  
14 this document in front of us, Plaintiff's Exhibit 210, was  
15 created for litigation or for another purpose.

16 MR. ASHER: It was for purposes of -- as a summary of  
17 data that were produced by our adversary which ordinarily --

18 THE COURT: Mr. Asher, I'm going to give you one  
19 final opportunity to answer my question, which is important to  
20 me ruling on your offer.

21 Was this document before us as Plaintiff's Exhibit 210  
22 created for litigation or for another purpose?

23 MR. ASHER: No. It was just for litigation purposes  
24 and --

25 THE COURT: Okay. Mr. Asher, with that proffer, I'm

1 going to sustain the objection. This is a summary document  
2 created for litigation purposes, which is to say there is no  
3 reason to think it was created in the ordinary course of  
4 business such that the business record exception applies. It  
5 is based on what appear to be hundreds and hundreds of  
6 documents which are not in evidence.

7 While it is, of course, the case that in a proceeding  
8 such as this the Rules of Evidence don't apply, there are  
9 moments when the Rules of Evidence become more important as  
10 when they reflect background concerns for reliability.

11 And a summary document that purports to summarize  
12 hundreds and hundreds of documents that are not in evidence  
13 and that was created for litigation purposes is -- does not  
14 include sufficient indicia of reliability such that at least  
15 without the admission of the underlying documents I'm going to  
16 allow it to come into evidence here.

17 So Mr. Roberts' objection to Plaintiff's Exhibit 210 is  
18 sustained.

19 MR. ASHER: Your Honor, I would request Your Honor's  
20 consideration of two factors. One is this is an evidentiary  
21 hearing on a motion for a preliminary injunction and it's not  
22 for a trial as such. The rules permit a relaxation of the  
23 rules of admissibility, principles and rules in the federal  
24 Rules of Evidence and so forth.

25 I think that given the summaries, given that all of

1 these are simply business records, invoices and in particular  
2 uniformly from the customers, all of which our adversary  
3 received -- and the second factor, of course, is that the  
4 difference between this document and if we were at trial on  
5 this, all of these things would be submitted in notebooks and  
6 other documents.

7           It's a formality that I don't think, particularly in  
8 the circumstances of a preliminary injunction hearing, would  
9 require a strict application of the federal Rules of Evidence  
10 as if we were at trial itself.

11           Ultimately, there will be in this case --

12           THE COURT: Mr. Asher, thank you for that. I  
13 appreciate it. As I noted in my ruling, I appreciate that  
14 this is not a trial. I appreciate my discretion to relax and  
15 indeed not to apply the federal Rules of Evidence.

16           I have, throughout the course of the last two days,  
17 allowed in many things, as I've stated explicitly and  
18 sometimes implicitly, that would not be admitted at trial.  
19 For example, including declarations.

20           However, as I said a moment ago, I'm exercising my  
21 discretion not to admit this document for a number of reasons,  
22 one of which is, A, it was prepared for litigation, and, B, it  
23 purports to summarize hundreds upon hundreds upon hundreds of  
24 documents that are not in evidence.

25           So I appreciate that at trial if you laid a proper

1 foundation and called a proper summary witness you might be  
2 able to get this in, but in the absence of any foundation I'm  
3 going to exercise my discretion not to admit into evidence  
4 Plaintiff's Exhibit 210.

5 Mr. Asher, let's please move on.

6 MR. ASHER: I think we have just two subject matters,  
7 Your Honor, with this witness.

8 MR. ROBERTS: I request the document be taken down.

9 THE COURT: If I might, we did not for the record get  
10 the name of the witness, and if we could please have him state  
11 his name. Thank you.

12 THE WITNESS: Jin Woo Chun. My first name is Woo  
13 Chun, last name Jin, J-I-N.

14 No. My first name is Jin Woo, last name is C-H-U-N.  
15 Okay. The last name is Chun, C-H-U-N. First name is Jin Woo.

16 THE COURT: Okay. Mr. Asher, back to you. Thank  
17 you.

18 MR. ASHER: Thank you, Your Honor.

19 BY MR. ASHER:

20 Q. When did you first join Airtech?

21 A. In 2019.

22 Q. Historical product data has some importance in connection  
23 with your dealership and distributive business.

24 Could you please describe the degree or nature of the  
25 importance of having historical product data?

1 A. First of all, I will start with the items that Roy  
2 testified that he developed yesterday.

3 THE INTERPRETER: The Interpreter asked for a request  
4 for clarification.

5 A. (Continuing.) So I will start with the product that he  
6 mentioned yesterday in Roy's testimony that he developed. For  
7 example, in Redacted was developed in 2009, but as of  
8 now in this 2024 it is still continuing to be mass produced.

9 And also in case of a Redacted (phonetic)  
10 development was completed in 2014. The mass production is  
11 still continuing as of now and it will -- it is scheduled to  
12 be used in Redacted from now.

13 Now I will discuss the Redacted

14  
15 Redacted  
16  
17

18 For example, in the case of Redacted that is being used  
19 for Redacted the Redacted

20 Redacted  
21

22 I will briefly describe the necessary terms, periods,  
23 with respect to data. In the case of price history, we always  
24 need to confirm existing mass production and we need to do  
25 that twice. Therefore, the total period needed would be

1 Redacted

2 MR. ROBERTS: Your Honor, I'm going to object to the  
3 answer at this point being narrative, one; and two, if you  
4 read back the question, it's almost entirely unresponsive but  
5 it's certainly at this point a narrative answer. And then,  
6 lastly, this is, at three o'clock in the afternoon,  
7 cumulative. We have heard from multiple witnesses about  
8 production run --

9 THE COURT: Mr. Roberts, thank you. I don't take  
10 that as a motion to strike but as a cautionary flag.

11 Mr. Asher, please ensure your witness does not offer  
12 narrative answers. There is a large disproportionality  
13 between the question you put and the answer that's just been  
14 given. Next question, Mr. Asher.

15 BY MR. ASHER:

16 Q. On the importance of data as you've described, did you

17  
18 Redacted  
19

20 A. That's correct.

21 Q. Is that useful information?

22 MR. ROBERTS: Objection.

23 THE COURT: I'll allow it. I'll allow it.

24 Answer the question, please.

25 A. Yes, it is. In that information we can confirm the

1 authorized manufacturers as well.

2 BY MR. ASHER:

3 Q. Does Airtech from time to time obtain information with  
4 respect to obsolete and spare parts?

5 A. Yes, that's correct.

6 Q. What is the duration with respect to the purchase of that  
7 type of data?

8  
9  
10 Redacted  
11  
12  
13  
14  
15  
16

17 THE COURT: Mr. Asher, we are in a place where it is  
18 very hard for me to understand the relevance under Rule 401 of  
19 what is being said. Mr. Roberts did not object so I will not  
20 intervene except to tell you that the relevance of some of  
21 this is very hard to see.

22 BY MR. ASHER:

23 Q. Let me ask you a final question.

24 All the various types of data that you described, were  
25 those types of data collected and retained in the computers

1 during the time when Roy Yim worked at Airtech? "Yes" or  
2 "no"?

3 A. Yes.

4 Q. I'd like to show you another document which -- Plaintiff  
5 Exhibit 161 for identification. It was produced by --

6 THE COURT: Put the document up, please.

7 MR. ASHER: One second, Your Honor.

8 (Brief pause.)

9 MR. ASHER: It's on the screen at this point,  
10 Your Honor. It's Plaintiff's Exhibit 161 for identification.  
11 What I'd like to do is show the witness --

12 THE COURT: Is the document in evidence?

13 MR. ROBERTS: I don't believe it is.

14 MR. ASHER: No, at this point, not yet, Your Honor.

15 THE COURT: Are you going to offer it, Mr. Asher?

16 MR. ASHER: I'm offering it into evidence, yes.

17 MR. ROBERTS: Okay. I have an objection.

18 MR. ASHER: Let me try to ask the witness to identify  
19 and discuss. No objection.

20 MR. ROBERTS: I did not say "no objection." I do  
21 have an objection to this communication being put in through  
22 this witness. Roy was on the stand yesterday. He would have  
23 been the appropriate witness to introduce a conversation  
24 between him and another person, who is not testifying in this  
25 case.

1 I don't see how you're going to lay a foundation here  
2 with this witness. That's going to be my objection.

3 THE COURT: Mr. Asher.

4 MR. ASHER: I'm asking whether --

5 THE COURT: Mr. Asher, who produced this document?  
6 Mr. Asher, who produced this document?

7 MS. BAE: We produced the document, Your Honor.

8 THE COURT: Can I get a proffer from Mr. Asher as to  
9 where this document was produced from.

10 MR. ASHER: The general manager, the witness at  
11 present, would introduce that he was the custodian of the  
12 document.

13 THE COURT: No, no, Mr. Asher. I asked you a  
14 question. Where was this document produced by Airtech from?

15 MS. BAE: It was from Defendant Yim's old computer,  
16 Your Honor.

17 THE COURT: Okay. The objection is overruled. We're  
18 in a hearing. That provides me a sufficient sense that this  
19 is fine from an authentication perspective. It purports to be  
20 a statement of a party opponent. It's authenticated by  
21 content.

22 Mr. Asher, move quickly, please, through this document.  
23 Plaintiff's Exhibit 161 is in evidence.

24 (Plaintiff's Exhibit No. 161 was received in  
25 evidence.)

1 BY MR. ASHER:

2 Q. Recognizing these documents, briefly tell us what is set  
3 forth in the communications that are set forth on this e-mail  
4 and also make reference to the dates.

5 A. If you look at the bottom of this e-mail, this is an  
6 e-mail sent by Redacted one of the vendors, to Roy on  
7 September 8, 2021.

8 The e-mail on top is a response from Roy to Redacted  
9 The date is February 28th, 2022. This shows the fact that Roy  
10 was in possession of this mail which was sent to the company  
11 while he was at the company.

12 After he had left the company on February 28th, 2022,  
13 not only did he have this in e-mail in possession after he  
14 left the company but he also responded.

15 THE COURT: Hold on, hold on.

16 Mr. Roberts has not made a motion to strike, and so I  
17 will therefore not strike that testimony. This is argument in  
18 the guise of testimony.

19 Mr. Asher, ask questions that this witness has some  
20 basis for answering and not simply offering an argument. Next  
21 question.

22 MR. ASHER: I would offer into evidence the e-mail  
23 which was obtained and I believe it's been received in  
24 evidence.

25 THE COURT: Are you talking about Plaintiff's

1 Exhibit 161? That was offered into evidence 8 or 10 minutes  
2 ago. It was at that point received into evidence. Let's move  
3 on, please.

4 BY MR. ASHER:

5 Q. So you identified the actual sources and timing of the --  
6 as set forth in your own computer when these dates were  
7 received at Airtech itself?

8 MR. ROBERTS: Objection to form.

9 THE COURT: Sustained.

10 MR. ASHER: All right. Then we have no further  
11 questions, Your Honor.

12 THE COURT: Thank you.

13 Mr. Roberts.

14 MR. ROBERTS: At this point, Your Honor, to conclude  
15 with --

16 THE COURT: I'm sorry, I didn't hear. Mr. Roberts,  
17 do you have cross-examination with this witness?

18 MR. ROBERTS: I'd like to confer with my colleague  
19 for a moment about the testimony. Some of it was --

20 MR. ASHER: Your Honor --

21 THE COURT: Mr. Asher, please pause.

22 Mr. Roberts, how do you want to do this consultation,  
23 given that we're in separate rooms?

24 MR. ROBERTS: We're connected electronically. I'd  
25 like a four- or five-minute break.

1 MR. ASHER: Your Honor, what I'd like to offer into  
2 evidence --

3 THE COURT: Mr. Asher, Mr. Asher --

4 MR. ASHER: I have all of his declarations,  
5 Your Honor. I'd like to offer them into evidence.

6 THE COURT: Mr. Asher, you passed the witness.

7 MR. ASHER: No, I didn't by any means do so,  
8 Your Honor. I just wanted to put into evidence each of his  
9 declarations.

10 THE COURT: I'll let you resume. Hold on, Mr. Asher.  
11 Let's do this as quickly as can be done.

12 MR. ASHER: I can offer now initially with exhibit --  
13 Plaintiff 29 for identification, no attachments, no exhibits.

14 THE COURT: Mr. Roberts.

15 MR. ROBERTS: I can't see it. Can you please move it  
16 down?

17 (Brief pause.)

18 MR. ROBERTS: The problem with this is that, one, he  
19 hasn't laid a foundation for any of this to come in, and,  
20 secondly, the company for which it talks about is not a  
21 company by which the order prohibited him from doing business.

22 THE COURT: Mr. Roberts, let's look, please, slowly  
23 at the declaration. Please go to the top of it so I can  
24 review it paragraph by paragraph. Thank you. Please go to  
25 paragraph 3.

1 MR. ASHER: In paragraph 3 of the declaration?

2 THE COURT: Please go to paragraph 5. Thank you.

3 (Brief pause.)

4 MR. ASHER: Your Honor?

5 THE COURT: Please go to paragraph 7.

6 (Brief pause.)

7 THE COURT: Please continue to paragraph 8.

8 (Brief pause.)

9 THE COURT: I'm not going to allow this document into  
10 evidence. I'm going to sustain Mr. Roberts' objection. Much  
11 of this is based on hearsay; much of it is entirely  
12 conclusory. It is, much of it, in the nature of argument  
13 rather than evidence.

14 It doesn't purport to have a foundational basis. The  
15 witness who has been here could lay a foundational basis  
16 perhaps but has not done so. The motion is -- the objection  
17 is sustained.

18 Mr. Asher, anything else with this witness?

19 MR. ASHER: I'd like to go to Plaintiff's 30 for  
20 identification. It's a supplemental declaration.

21 THE COURT: Okay.

22 MR. ASHER: Mr. Chun in further support of the motion  
23 for injunctive relief.

24 THE COURT: Mr. Roberts, your position with respect  
25 to Plaintiff's Exhibit 30?

1 MR. ROBERTS: Scroll down, please.

2 (Brief pause.)

3 MR. ROBERTS: I have the same objection. The  
4 witness's testimony did not substantiate these statements.  
5 Foundation isn't there. It's conclusory entirely.

6 THE COURT: Okay. Let's go to the top of the  
7 exhibit. I'll review it, please. Go to the first paragraph.

8 (Brief pause.)

9 THE COURT: And the third paragraph and the fourth,  
10 please.

11 (Brief pause.)

12 THE COURT: And further down, please. And further  
13 down, please.

14 (Brief pause.)

15 THE COURT: Further down, please.

16 Okay, I'm going to admit this declaration into evidence  
17 but for paragraph 10, which contains an especially unreliable  
18 form of hearsay. I note that I will be open to arguments that  
19 this declaration should be discounted greatly in its  
20 importance, perhaps down to nothing, due to the fact that the  
21 witness is before us and has not testified to anything that is  
22 here.

23 He is still subject to cross-examination as to what I  
24 have admitted on the declaration, so Mr. Roberts has an  
25 opportunity to do exploration that he might want to now, but

1 the value of this declaration, though in evidence, but for  
2 paragraph 10, but for paragraph 10, is at least questionable.

3 The declaration is in evidence, Plaintiff's Exhibit 30.  
4 What is not in evidence is paragraph 10 of Plaintiff's  
5 Exhibit 30.

6 (Plaintiff's Exhibit No. 30 was received in  
7 evidence.)

8 THE COURT: Mr. Asher, anything else?

9 MR. ASHER: Yes. The next of Mr. Chun's is  
10 Plaintiff's Exhibit 163.

11 THE COURT: Okay. Let's have it on the screen, and  
12 then we'll take Mr. Roberts' position.

13 Let's get the document on the screen, please.

14 Okay, this is Plaintiff's Exhibit 163. It is, I  
15 believe, a declaration.

16 Mr. Roberts, your position.

17 MR. ROBERTS: I'd like to see it. Please scroll  
18 down.

19 (Brief pause.)

20 MR. ROBERTS: So only with the exception I would  
21 object to the fact that there has not been any material  
22 foundation laid concerning proprietary information or trade  
23 secrets through the testimony of this witness. I don't think  
24 those words were even in a question or testimony of this  
25 witness, as I listened for those words carefully.

1           Here we have it in this affidavit and it goes to the  
2 core of the issue and they're just, quite frankly, entirely  
3 unsupported statements. Other than that -- I can't see the  
4 numbers that they're in, but other than that I wouldn't have  
5 an objection. I would object for that purpose.

6           THE COURT: Let's -- with the benefit of Mr. Roberts'  
7 objection, let's go to paragraph 1.

8           Mr. Roberts, you have no objection to paragraphs 1 or  
9 2, I assume.

10          MR. ROBERTS: No, sir.

11          THE COURT: Let's scroll down, please.

12          MR. ROBERTS: No.

13          THE COURT: I assume 3 is fine.

14          MR. ROBERTS: And 4.

15          THE COURT: And 4 is fine. Those come in.

16          5 and 6.

17          MR. ROBERTS: Okay.

18          THE COURT: Okay. Those come in without objection.  
19 7 comes in, in your judgment, Mr. Roberts?

20          MR. ROBERTS: Yes.

21          THE COURT: So there's no objection to 7.

22          Mr. Roberts, do you have an objection to paragraph 8?

23          MR. ROBERTS: No.

24          THE COURT: It comes in. Do you have an objection to  
25 paragraph 9?

1 MR. ROBERTS: No.

2 THE COURT: Do you have an objection to paragraph 10?

3 MR. ROBERTS: Well, 9 is a hearsay statement that's  
4 being boot-strapped, so I do object to that. Unless I'm  
5 mistaken, Mr. Hwang hasn't testified.

6 THE COURT: Everything is in so far from this exhibit  
7 that is before us, Plaintiff's Exhibit 163. Paragraph 9 is  
8 not in. Sustained.

9 Paragraph 10, Mr. Roberts, do you have an objection?

10 MR. ROBERTS: Again, this is a critical piece of  
11 testimony that was not explored in his direct.

12 THE COURT: Sustained, paragraph 10. Paragraph 11.

13 MR. ROBERTS: Same for Mr. Hwang.

14 THE COURT: Sustained as to paragraph 11.  
15 Paragraph 12.

16 MR. ROBERTS: No.

17 THE COURT: Paragraph 12 is in.

18 Paragraph 13, Mr. Roberts, your position?

19 MR. ASHER: 12, Your Honor?

20 THE COURT: 12 is in.

21 MR. ASHER: Thank you.

22 THE COURT: Paragraph 13.

23 MR. ROBERTS: Not explored with this witness. I  
24 object.

25 THE COURT: Overruled. Paragraph 13 is in.

1 Paragraph 14, Mr. Roberts, your position?

2 MR. ROBERTS: 14 -- I'm not getting your ruling on  
3 13. I want to object to 14.

4 THE COURT: It's in.

5 Paragraph 15.

6 MR. ROBERTS: He had testified to this. I don't  
7 object.

8 THE COURT: I'm sorry. One more time.

9 MR. ROBERTS: I do not, Your Honor.

10 THE COURT: No objection to 15. It comes in.

11 Paragraph 16.

12 MR. ROBERTS: None.

13 THE COURT: No objection. Paragraph 16 comes in.

14 Paragraph 17, Mr. Roberts, your position.

15 MR. ROBERTS: None.

16 THE COURT: No objection. Paragraph 17 comes in.

17 Let's go to 18.

18 MR. ROBERTS: I object to this. This is  
19 inflammatory. It was not explored with the witness. There  
20 wasn't an adequate foundation on what I consider to be in --

21 THE COURT: In addition, it is sustained and  
22 necessarily based on hearsay. Paragraph 18 is not in  
23 evidence.

24 Paragraph 19, Mr. Roberts, your position?

25 MR. ROBERTS: No objection.

1 THE COURT: It comes in.

2 Paragraph 20.

3 MR. ROBERTS: None.

4 THE COURT: It comes in.

5 Paragraph 21.

6 MR. ROBERTS: Objection. This is a --

7 THE COURT: Sustained. It's a legal conclusion.

8 It's not a statement of fact.

9 That's the end of the document.

10 (Plaintiff's Exhibit No. 163 was received in  
11 evidence.)

12 THE COURT: Mr. Asher, anything else to offer?

13 MR. ASHER: Yes, Your Honor. We have one item which  
14 I had it in front of me just a minute ago. 180.

15 (Brief pause.)

16 MR. ASHER: Your Honor, we have one document. I had  
17 it here -- and it's now in my hand again. Thank you.

18 I'd like to offer into evidence Plaintiff 180 through  
19 this witness and specifically to -- in line with the colloquy  
20 we had earlier today in terms of attaining if we had a witness  
21 to describe the means by which we prepared Appendix A set  
22 forth in Plaintiff 180.

23 Mr. Chun is here for that purpose briefly to describe  
24 the means by which he collected all of the data that is set  
25 forth in Exhibit A to the Airtech proprietary and other

1 protected products.

2 THE COURT: Okay. Mr. Roberts, your position on this  
3 exhibit?

4 MR. ROBERTS: It is identical to my position on the  
5 prior exhibit that was offered for the same reason, which  
6 is --

7 THE COURT: Mr. Roberts, that's sustained.

8 Mr. Asher, if you would like to try to lay a foundation  
9 through this witness for admission of the document before us,  
10 which is marked Exhibit A as part of Plaintiff's Exhibit 180,  
11 you can do so with the witness sitting before you.

12 BY MR. ASHER:

13 Q. Mr. Chun, Plaintiff Exhibit 180 for identification which  
14 I placed in front of you, are you familiar with the  
15 preparation of Exhibit A? A "yes" or "no" basis.

16 A. Yes, I am.

17 Q. Did you prepare this document?

18 A. Yes, I did.

19 Q. Please describe the means by which you prepared it.

20 A. I compiled the items that is attached to exclusivity  
21 agreement and/or exclusive letters and proprietary items.

22 Q. Where is the sources of your information?

23 A. Documents that Mr. Lee had and documents that I received  
24 and interviews with employees.

25 Q. Were customer and vendor agreements that Airtech had from

1 various vendors or customers -- are they among the documents  
2 that you reviewed?

3 A. Yes, sir. Those were included and those were the reasons  
4 that I prepared this document.

5 Q. Now, there's a substantial number of products that are  
6 shown here for various vendors.

7 Where did you actually obtain your information for the  
8 purposes of collecting all of the data for vendors as set  
9 forth in the column on the left-hand side?

10 A. I collected this information from our company system.

11 Q. Software system?

12 A. Yes.

13 Q. The next column was for items. The same computer system  
14 was the source or the information that's set forth in the  
15 second column headed "item"?

16 A. Yes. It is possible to confirm these items from our  
17 exclusive letters and exclusive agreements, and we can also  
18 find these items from our system.

19 Q. Is the same also true in the next -- third category  
20 headed "description"? Was that information also obtained in  
21 your computer systems at Airtech?

22 A. Yes, of course.

23 Q. Now, in the next column it says "customer." In those  
24 instances where a customer is identified, where did you get  
25 that information? Was it the same source from Airtech's

1 computer?

2 A. Yes. If you enter just an item number of a product, you  
3 can get all this information in our computer system -- company  
4 computer system.

5 Q. In some instances in this fourth column it says: "Not  
6 under eleven customer."

7 Do you see that? "Eleven customer," what does that  
8 mean?

9 A. This document does not have a particular relationship  
10 with whether a customer is on the 11 customer list or not.  
11 This document was prepared to identify the exclusive agreement  
12 and exclusive letter items, so it is there but this document  
13 does not -- it doesn't mean much for this document.

14 Q. Moving to the next column, it says "program."

15 What are those individual items shown there, generally  
16 speaking?

17 MR. ROBERTS: Your Honor, I'm going to object at this  
18 point. It's clear to me that --

19 THE COURT: Hang on for a second. Hang on for a  
20 second.

21 Mr. Asher, are you done laying the foundation through  
22 the witness for this document that's in front of us, which is  
23 Exhibit A?

24 MR. ASHER: I believe I've substantially completed.  
25 I just wanted to note for the record that the final column

1 called "category" sets forth references to the type of  
2 agreements and other protected product correspondence which  
3 the witness has already referred to.

4 THE COURT: Before Mr. Roberts describes for us what  
5 his position will be, please tell me how many pages there are  
6 on this document that is Exhibit A.

7 MR. ASHER: Pardon me?

8 MS. BAE: How many pages?

9 THE COURT: How many pages are in Exhibit A?

10 MR. ASHER: It is a 20-page document, and my offer  
11 would be specifically from the supplemental responses to  
12 interrogatories, which are on page -- the third page of  
13 Plaintiff Exhibit 180 for identification, which provides a  
14 description and a --

15 THE COURT: Mr. Asher, hang on for a second.

16 MR. ASHER: It's signed by --

17 THE COURT: Hang on, hang on, Mr. Asher.

18 You're offering into -- we are discussing Exhibit A.  
19 You are also offering something else at the same time. That  
20 doesn't really work.

21 Why don't we first deal with Exhibit A, and then we can  
22 see what else you want to offer.

23 MR. ASHER: Let me put it in a definitive way,  
24 Your Honor. I would offer into evidence the supplemental  
25 responses to interrogatories, including the verification from

1 Plaintiff Jin Lee, which he testified about this --

2 THE COURT: Mr. Asher, we're trying to do one thing  
3 at a time. We're in a long conversation about Exhibit A, and  
4 I asked a question about how long it is and we want to hear  
5 Mr. Roberts' position.

6 MR. ASHER: Right. Then --

7 THE COURT: Mr. Asher, please let me finish.  
8 Mr. Roberts is going to state his position on Exhibit A.  
9 After he has stated his position on Exhibit A, I will rule on  
10 Exhibit A. If there's additional information you want to  
11 offer, we can do it at that point.

12 MR. ASHER: Understand, Your Honor. The Exhibit A is  
13 20 pages, each of which contains the columns along the lines  
14 Mr. Chun and I had just discussed.

15 THE COURT: Mr. Asher, thank you. Understood.

16 With respect to Exhibit A of Plaintiff's Exhibit 180,  
17 Mr. Roberts, what is your position?

18 MR. ROBERTS: Your Honor, my position is identical in  
19 substance to the objection I made before. This is -- this  
20 document is, by admission of the witness, created for the  
21 purposes of litigation. It is an exhibit to answers to  
22 interrogatories. It is a summary of evidence.

23 In addition, it contains hearsay statements that are  
24 inflammatory and argumentative. And, most importantly, under  
25 801 it is not going to meet an exception to the hearsay rule.

1           It is not a business document for which it can be --  
2   that was created in the ordinary course of business for which  
3   it can be relied upon as such. Therefore, creating its -- you  
4   know, an exception to its authenticity and reliability.

5           In fact, the opposite is true. What we have here is  
6   20 pages of what Airtech deems to be proprietary,  
7   confidential, and protected products.

8           I mean, to go about this and lay the foundation to  
9   introduce substantively all of the underlying evidence that  
10   would have been reviewed and thus subject to vetting,  
11   cross-examination of the witnesses, et cetera, didn't happen,  
12   number one.

13           Number two, even if that were to happen, it's not  
14   necessarily so that the Court would accept such a summary of  
15   evidence through a fact witness providing opinion, not without  
16   substantial vetting, given that it's 20 pages long. This  
17   could mean anything, and it's being offered for the purpose  
18   that goes to -- you know, this isn't a collateral issue.

19           This is being offered for direct evidence that 824 or  
20   800-plus items are indeed proprietary or otherwise protected,  
21   many of which you could see aren't even within the 11 entities  
22   identified in the court order for which, you know, some level  
23   of protection and restraint was initially granted by the Court  
24   ex parte.

25           This is a really unfair summary of evidence, which is

1 why I rely upon 801. It's --

2 MR. ASHER: Your Honor, may I be heard on this?

3 MR. ROBERTS: I'm just going to finish my thought, if  
4 I might.

5 THE COURT: Mr. Roberts, you can finish, please.

6 MR. ROBERTS: I didn't say why for the reasons I've  
7 articulated it would not meet an exception under 801. It is  
8 for these purposes that summary evidence such as this are  
9 routinely not admissible -- not admissible. Excuse me.

10 That's all, Your Honor.

11 THE COURT: Mr. Asher, can I ask you a question,  
12 please?

13 MR. ASHER: Yes.

14 THE COURT: There's 20 or so pages to Exhibit A. Is  
15 this based on more or less than a thousand underlying pages of  
16 documents?

17 MR. ASHER: Yes, and in a computer form, as Mr. Chun  
18 testified, together with the agreements that are also referred  
19 to in the category. Yes. They're digital and physical.

20 THE COURT: Is it more than 1,000 pages of documents  
21 that Exhibit A purports to be based on or less than  
22 1,000 pages of documents that Exhibit A purports to be  
23 based on?

24 MS. BAE: Less than 1,000 pages, Your Honor.

25 THE COURT: Is it more or less than 500 pages?

1 MS. BAE: Maybe the witness can --

2 THE COURT: I'm asking you for a proffer.

3 MS. BAE: Around 500 pages.

4 THE COURT: Of those 500 or so pages, how many are in  
5 evidence in this proceeding?

6 MR. ASHER: There are approximately -- with respect  
7 to the category on the right-hand side, there are  
8 approximately no more than 30 documents in physical form that  
9 fall into that category.

10 THE COURT: Okay. So what I'm hearing is that we are  
11 in a situation where you are offering a summary document where  
12 something like 6 or 8 percent of the documents that form part  
13 of the basis for the summary are in evidence. In addition,  
14 what the witness testified to is that the sources upon which  
15 Exhibit A was based are a number of different sources: A  
16 computer system, documents from a vendor, documents obtained  
17 from Mr. Lee, which is how the witness started off by saying,  
18 and in addition from witness testimony, verbal confirmation he  
19 received from various people.

20 MR. ASHER: I don't --

21 THE COURT: All of that -- Mr. Asher, please don't  
22 speak at the moment.

23 MR. ASHER: Yes.

24 THE COURT: All of that renders this Exhibit A  
25 unusually unreliable. In addition, there are parts of this

1 document that on their face fail any conceivable 401 test  
2 because some of them, for example, don't reach any of the  
3 customers who purport to be relevant here.

4 There are some parts that fail a 403 test because the  
5 reference, for example, to program has simply not been  
6 explored at any point in this multi-day hearing. And then  
7 there are parts of this document that are simply legal  
8 argument --

9 Mr. Asher, please don't speak while I'm speaking.

10 There are parts of this document that simply state  
11 legal conclusions, and legal conclusions that, as Mr. Roberts  
12 has noted, go very, very close to the heart of this entire  
13 proceeding, by which I mean the 20 pages of conclusions as to  
14 whether something is exclusive in some way or not.

15 In addition, I note that the document purports, I  
16 think, to include a summary of testimony or statements from  
17 the defendant who has testified, but so far as I can tell, did  
18 not testify to the subjects that are being described.

19 While I am well aware of the breadth of my discretion  
20 in terms of admitting into evidence in a non-jury, non-trial  
21 context information that does not meet the standard set out in  
22 the federal Rules of Evidence, the information set out in  
23 Exhibit A, given the proffer that's been provided, given the  
24 evidentiary foundation that has been laid, is, in my judgment,  
25 so unreliable, among other things, that it cannot be admitted

1 in these proceedings, given the current foundation and given  
2 the current proffer.

3 MR. ASHER: Your Honor, I --

4 THE COURT: That's my ruling.

5 MR. ASHER: Your Honor, I understand your concerns,  
6 Your Honor, but I wanted an opportunity to address what  
7 Mr. Roberts said and also Your Honor's concerns about this.

8 Of course it could be characterized from our position  
9 and certainly from the Court's understanding and even set  
10 forth extensively in defendants' expert reports which rely on  
11 this document to address the enforceability and sufficiency of  
12 the order that's before Your Honor today in terms of whether  
13 the March 28, 2022, order should be modified or not.

14 They present their argument on the basis of this  
15 document. So this document, whether it's merely marked for  
16 evidence or not, this is the basis on which they're  
17 challenging the sufficiency of the court order.

18 THE COURT: But, Mr. Asher, there is -- first of all,  
19 if the defendants opt to offer this document into evidence  
20 through an expert or otherwise, we will take it from there and  
21 I assume you won't object.

22 There is also all the difference in the world between  
23 argument to criticize a court order or anything else that is  
24 based on a document and the admission into evidence of that  
25 document itself.

1           So what I would tell you, Mr. Asher, is understanding  
2 the scope of my discretion, having heard two rounds of your  
3 argument on this, I am sticking with my ruling. This  
4 Exhibit A is simply not going to come in, given the foundation  
5 that's been laid, including the proffer that's been provided.

6           Mr. Asher.

7           MR. ASHER: Could I make another proffer of it for  
8 Your Honor's consideration? This is a list of products which  
9 Airtech dealt with. Whether it was with the 11 customers  
10 or not, these products fall at the very least under  
11 paragraph 3 of the March 28, 2022, order.

12           It's a factual, not a characterization issue, about  
13 proprietary or protected. A court order in paragraph 3  
14 doesn't characterize anything in that nature. It simply said  
15 if it was a product that would be dealt with with respect to  
16 specific vendors during the period of time when Roy Yim worked  
17 with our client, so that this list, whether they're  
18 characterized or not, as Mr. Roberts fears, but here is simply  
19 a collection of documents relating to the products that were  
20 being -- on which we were conducting business during the  
21 period when Roy Yim was employed.

22           And on that basis it seems to set forth levels of  
23 criteria and strictures or Mr. Yim's guidance to understand in  
24 the very face of his expert reports. The expert reports said  
25 they can't tell what the documents are. I think that we can

1 see all these very clearly what the products are that he  
2 should -- it's a watch word for him.

3 THE COURT: Mr. Asher, I've heard your argument.  
4 What I would say to you is that is the use you might have made  
5 of this document. Conceivably if there was something remotely  
6 plausible as a foundational basis for it to come in, I  
7 appreciate that a foundational basis in strict compliance with  
8 the Rules of Evidence is not necessary in this context.

9 I have discretion and I'm exercising my discretion to  
10 not let this document into evidence simply because of all the  
11 reasons I have set out until now. Let us move on. That's my  
12 ruling.

13 MR. ASHER: Thank you, Judge.

14 THE COURT: What do we have next?

15 MS. BAE: Plaintiff rests, Your Honor.

16 MR. ASHER: Yes.

17 THE COURT: What's that?

18 MS. BAE: We rest, Your Honor.

19 MR. ASHER: We have no further --

20 THE COURT: No further questions of the witness.

21 Mr. Roberts, do you have any cross-examination you'd  
22 like to do?

23 MR. ASHER: Yes. Thank you, Judge.

24 THE COURT: Mr. Roberts, any cross-examination you'd  
25 like to do?

1 MR. ROBERTS: No, Your Honor.

2 THE COURT: Okay. Any further witnesses from the  
3 plaintiff?

4 MR. ASHER: Nothing further, Your Honor. We rest.  
5 (Witness excused.)

6 THE COURT: It is now 3:59. I suspect everybody  
7 could use a little time to rest and also to digest what has  
8 happened in the last two days.

9 I would suggest that we get together offline and figure  
10 out a time for Mr. Roberts to put on, upon reflection,  
11 whatever case he opts to put on. What I would say is a member  
12 of my team will reach out to the parties to schedule a final  
13 in-person session if we need it. And if the parties  
14 indicate -- and it's really Mr. Roberts at this point -- that  
15 we do not need it, we will then schedule a time for  
16 post-hearing briefing.

17 How does that sound like as a plan, Mr. Asher, from  
18 your perspective?

19 MR. ASHER: Yes, Your Honor. For Ms. Bae and I,  
20 that's fine. Thank you.

21 THE COURT: Mr. Roberts, from yours?

22 MR. ROBERTS: Yes, Your Honor. Only that I would  
23 hope to be able to present some testimony via Zoom as soon as  
24 practicable.

25 THE COURT: I understand that you'd like to do that,

1 but there's other things that press upon my schedule.

2 MR. ROBERTS: I appreciate that, Your Honor.

3 THE COURT: Is there a reason, Mr. Roberts, that you  
4 use the word "Zoom?" I don't prefer to proceed in this way.

5 MR. ROBERTS: Only because the particular experts --  
6 I'll have to get back to the Court in terms of their -- I  
7 think they're out of state, and given that we had scheduled  
8 this second day for that purpose, that was one of the reasons  
9 why, you know --

10 THE COURT: I'm sympathetic to that. Let's do this:  
11 Mr. Roberts, you'll reflect on what you do or don't need in  
12 light of these proceedings. If your judgment is you need more  
13 time, you'll have more time.

14 I'd like to understand from you, if you don't mind now,  
15 where these experts are from so that I can weigh the  
16 understandable inconvenience against the preference I have for  
17 in-person testimony.

18 MR. ROBERTS: I'm going to ask Mr. Kamvosoulis to  
19 jump in. I'm satisfied that we would be able to put a very  
20 strict time limit on direct. We can move through our  
21 witnesses quickly. It's not a problem for us.

22 THE COURT: It's not that. I'm trying to find out if  
23 your experts are from Pennsylvania or from Hawaii.

24 MR. ROBERTS: Mr. Kamvosoulis, in terms of who you  
25 want to call first and, you know, the location, please advise

1 the Court.

2 MR. KAMVOSOULIS: Your Honor, good afternoon.

3 Dr. Jason Kiddy would be our first expert, and he's located in  
4 Maryland. Wayne Norris is our second expert, and he's located  
5 in Santa Barbara, California.

6 THE COURT: You're gonna propose to call both of  
7 them?

8 MR. KAMVOSOULIS: Yes. The testimony will not be  
9 duplicative. And the second witness, Mr. Norris, is much  
10 shorter than the first.

11 THE COURT: Can you get this completed -- putting  
12 aside cross-examination, but can you get this completed, both  
13 witnesses in total, in 90 minutes?

14 MR. KAMVOSOULIS: My direct should not -- I mean, I  
15 timed them in preparation for today's hearing, and they should  
16 not exceed an hour and a half.

17 THE COURT: In total?

18 MR. KAMVOSOULIS: In total. I can't judge whatever  
19 objections might be proffered during that.

20 THE COURT: Okay. All right. A member of my team  
21 will get back to you with respect to a time. I would suggest  
22 that Monday morning first thing is likely to be the time.

23 MR. ROBERTS: Thank you, Judge.

24 MS. BAE: Coming Monday, Judge?

25 THE COURT: Yes.

1 MR. ROBERTS: Thank you, Your Honor.

2 THE COURT: Okay. Mr. Asher, from your perspective,  
3 anything further that we should cover today?

4 MR. ASHER: Nothing, Your Honor. We have -- although  
5 Ms. Bae and I may prune down the questions for cross that I  
6 have. Without pruning -- we'll discuss that with your team  
7 member -- we may have --

8 MS. BAE: Thank you, Your Honor.

9 MR. ASHER: We'll have at least 30 minutes.

10 THE COURT: Okay.

11 Mr. Roberts, anything further from your perspective?

12 MR. ROBERTS: I'm satisfied, Your Honor. Thank you.

13 THE COURT: Okay. We'll be in touch as to when we'll  
14 continue. Thank you all very much. Have a good day,  
15 everybody.

16 MR. ROBERTS: Thank you, Your Honor.

17 MR. ASHER: Okay, Judge. Thank you.

18 (Which were all the proceedings held in the  
19 above-entitled matter on said date.)

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**FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**

I, **Lisa A. Larsen**, RPR, RMR, CRR, FCRR, Official Court  
Reporter of the United States District Court for the District  
of New Jersey, do hereby certify that the foregoing  
proceedings are a true and accurate transcript from the  
record of proceedings in the above-entitled matter.

/S/Lisa A. Larsen, RPR, RMR, CRR, FCRR

Official U.S. District Court Reporter ~

District of New Jersey

DATED this February 3, 2024

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